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3
OKE'S FISHERY LAWS

SECOND EDITION

BY

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A
HANDY BOOK
OF THE
FISHERY LAWS:

CONTAINING THE LAW AS TO
PRIVATE AND PUBLIC FISHERIES IN THE INLAND
WATERS OF ENGLAND AND WALES,
AND THE
FRESHWATER FISHERIES PRESERVATION ACT, 1878,
Systematically arranged:

WITH THE ACTS, DECISIONS, NOTES AND FORMS.

BY
GEORGE C. OKE,
AUTHOR OF "THE MAGISTERIAL SYNOPSIS" AND "FORMS"
"THE LAWS OF TURNPIKE ROADS," ETC., ETC.

SECOND EDITION

BY
J. W. WILLIS BUND, M.A.,
Of Lincoln's Inn, Barrister at Law, Chairman Severn Fishery Board,
AUTHOR OF "THE LAW OF SALMON FISHERIES IN ENGLAND AND WALES."



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P R E F A C E.

THIS Work formerly formed a part of Mr. Oke's Work on the Game Laws; but, as recent legislation added considerably to the size of that volume, and as questions of Fishery Law have of late years assumed a greater importance than formerly, it was thought advisable to separate the Fishery from the Game Laws, and publish them as an independent treatise.

The Act of 1878 has made a great change in the law as to Freshwater Fisheries, and is, as it stands, so unintelligible to the ordinary reader, that an attempt to state clearly the precise changes it has made in the law may not be unacceptable to the fishing public. The Editor has stated what appears to him to be the construction of the Act on several points; but this Act has made the Fishery Laws' confusion worse confounded, and it is impossible to state with any certainty what is the effect, or even what is the object, of the Act in many cases.

The Forms comprise most of the offences that will be usually met with, and it is hoped may prove useful.

Where the text of the Salmon Fishery Acts is given, the words that subsequent Acts have interpolated are printed in italics: thus, in the sections in which it is said salmon shall mean trout or char, the words trout or char will be found inserted in italics. In those cases where additions are indirectly made to the Acts, as by the minimum penalties clause in the Act of 1865, the additions are placed in Roman type between brackets. By this means, a person reading the section will see its real effect.

LINCOLN'S INN,

August 31st, 1878.

CONTENTS.

	PAGE
CASES CITED	vii
STATUTES REFERRED TO	ix

CHAPTER I.

PUBLIC FISHERIES	1—8
------------------------	-----

CHAPTER II.

PRIVATE FISHERIES	9—16
-------------------------	------

CHAPTER III.

LAW AS TO FISHING IN PUBLIC FISHERIES	17—20
---	-------

CHAPTER IV.

LAW AS TO FISHING IN PRIVATE FISHERIES	21—30
--	-------

CHAPTER V.

LOCAL LAWS AS TO FISHERIES	31—33
----------------------------------	-------

CHAPTER VI.

THE FRESHWATER FISHERIES ACT, 1878	34—63
--	-------

	PAGE
CHAPTER VII.	
PROCEEDINGS FOR PENALTIES UNDER THE FISHERY ACTS, AND FORMS OF PROCEDURE	64—96

APPENDIX.

A.—List of Fishery Districts in England and Wales	97
B.—List of Fishery Districts where Annual Close Time varied ..	97
C.—List of Fishery Districts where Weekly Close Time varied ..	98
D.—List of Fishery Districts where use of Gaff prohibited	99
E.—List of Fishery Districts where Close Time for Trout altered	99

INDEX	101
-------------	-----

CASES CITED.

	PAGE		PAGE
Alison, Re	68	Embleton v. Brown	24
Allen, Rogers v.	11	Etheridge, Woodhouse v. ..	33
Anon., Year Book, 15 Edw. 4	6		
		Feast, White v.	4, 24
Bagott v. Orr	2	Fitzwalter (Lord), Case of ..	5
Bailey, Holford v. ...	7, 10, 12, 13	Fogwell, Duke of Somerset v.	12
Ball v. Herbert	6		
Banne, Case of the River ..	2	Gale, Middleton v.	64
Beauchamp (Earl) v. Winn ..	13	Garton and Stone, Hearne v.	67
Beech, Blake v.	67	Gateward's case	15
Birch, Paley v.	27	Gee, Onley v.	65
Blake v. Beech	67	Goffin, Wilkinson v.	24
Bland, Lipscombe v.	15	Graham, Mayor of Carlisle v.	10, 13
Blundell v. Catterall	6	Green, Parker v.	67
Brickhall, R. v.	67		
Brown, Embleton v.	24	Hargreaves v. Diddams	4, 7
— v. Turner	67	Hayward, Ex parte	71
Burrow, R. v.	3	Hearne v. Garton and Stone	67
		Herbert, Ball v.	6
Carlisle (Mayor of) v. Graham	10, 13	Hodges, R. v.	23
Carter v. Murcott	2	Holford v. Bailey ..	7, 10, 12, 13
Cattel v. Ireson	67	Houghton, Duke of Northumberland v.	11
Catterall, Blundell v.	6	Hudson v. Macrae	4, 6, 24
Clee & Osborne, R. v.	65	Hunthurst, R. v.	67
Clerk of the Peace for Rochester, Ex parte	71	Hyde, Ex parte	68
Cornwell v. Saunders	23, 67	—, R. v.	68
Courtenay (Lord), Seymour v.	9, 13		
Cray, Soden v.	67	Ireson, Cattel v.	67
Cridland, R. v.	65		
		Jones, Williams v.	16
Diddams, Hargreaves v. ..	4, 7		
		Kemp, Smith v.	13
Edgar v. The Special Commissioners for English Fisheries	11		
Egginton v. Mayor of Lichfield	68	Lamb v. Newbiggin	15
		Leatt v. Vine	23
		Leonard, Lyne v.	44
		Lichfield (Mayor of), Eggington v.	68
		Lipscombe, Bland v.	15

	PAGE		PAGE
Lucas, Watts v.	44	R. v. Pratt	5
Lyne v. Leonard	44	— v. Scotton	64
		— v. Stimpson	3, 24, 26
Macrae, Hudson v.	4, 6, 24	— v. Thexton	24
Mainwaring, R. v.	69	— v. Turner	67
Malcolmson v. O'Dea	2, 12	Rochester Clerk of the Peace	
Major, Watkins v.	4, 67	of), Ex parte	71
Marshall v. Ulleswater Steam		Rogers v. Allen	11
Navigation Co.	10	Ryan, Murphy v.	2, 3
Marten v. Pridgeon	67		
Middleton v. Gale	64	Saunders, Cornwell v.	23, 67
Millard, R. v.	65	Scotton, R. v.	64
Morden v. Porter	64	Seymour v. Lord Courtenay	9, 13
Murcott, Carter v.	2	Shaw, Turnidge v.	32
Murphy v. Ryan	2, 3	Smith v. Kemp	13
		Soden v. Cray	67
Newbiggin, Lamb v.	15	Somerset (Duke of) v. Fog-	
Northumberland (Duke of)		well	12, 32
v. Houghton	11	Special Commissioners of	
		English Fisheries, Edgar v.	11
O'Dea, Malcolmson v.	2, 12	Stacey v. Whitehurst	65
Old Alresford, R. v.	12	Stimpson, R. v.	3, 24, 26
Onley v. Gee	65	Stone and Garton, Hearne v.	67
Orr, Bagott v.	2		
Osborne and Clew, R. v.	65	Thexton, R. v.	24
		Turner, Brown v.	67
Paley v. Birch	27	——, R. v.	67
Parker v. Green	67	Turnidge v. Shaw	32
Peak, R. v.	23		
Pilkington, Mayor of York v.	26	Ulleswater Steam Navigation	
Porter, Morden v.	64	Co., Marshall v.	10
Pratt, R. v.	5		
Pridgeon, Martin v.	67	Vine, Leatt v.	23
R. v. Brickhall	67	Watkins v. Major	4, 67
— v. Burrow	3	White v. Feast	4, 24
— v. Clew and Osborne	65	—— v. Lucas	44
— v. Cridland	65	Whitehurst, Stacey v.	65
— v. Hodges	23	Wilcox, Williams v.	4
— v. Hunthurst	67	Wilkinson v. Goffin	24
— v. Hyde	68	Williams v. Jones	16
— v. Mainwaring	69	—— v. Wilcox	4
— v. Millard	65	Winn, Earl Beauchamp v. ...	13
— v. Old Alresford	12	Woodhouse v. Etheridge ..	33
— v. Peak	23		
		York (Mayor of) v. Pilking-	
		ton	26

STATUTES REFERRED TO.

. The reference to a page when a section is printed in full is denoted by an asterisk (*).

	PAGE		PAGE
16 & 17 Car. 2, c. 24	4	20 & 21 Vict. c. cxli	32
30 Geo. 2, c. 21	32	c. cxlvii, s. 52	32
18 Geo. 3, c. 33	31, 62, 63	21 & 22 Vict. c. 73, s. 1	66
37 Geo. 3, c. 95	31	22 Vict. c. 32	72
44 Geo. 3, c. xlv	32	22 & 23 Vict. c. clxx, ss. 2, 3	32
46 Geo. 3, c. xix	32	24 & 25 Vict. c. 96	78
4 & 5 Vict. c. 35, s. 82	15	s. 24 3, 4, 16, 21*,	
8 & 9 Vict. c. 118, ss. 105,		22*, 23*, 25, 67,	
106	15	94, 95	
11 & 12 Vict. c. 43 64, 79, 80		s. 25	24*
s. 1	65	s. 103	26
s. 2	66, 70	s. 117	23
s. 3	66	c. 97	80
s. 5	65	s. 32	27*, 95
s. 7	66, 71	ss. 58, 61, 77	28
s. 9	65, 66	c. 109, s. 5	20, 80
s. 10	64	s. 8	19, 38*, 80
s. 11	69	s. 9	19, 38*, 80
ss. 12, 13	66	s. 10	19, 81
s. 14	71	s. 11	19, 29, 81
s. 16	68	s. 12	30, 81
s. 18	68	s. 14 .. 19, 40*, 41*, 81	
s. 23	71	s. 15	19, 82
s. 25	68	ss. 16, 20, 22 .. 30, 82,	
ss. 28, 29, 31	71		83
ss. 33, 34	66	s. 17	82
c. 45, s. 3	68	s. 21	83
12 & 13 Vict. c. 45, s. 5	76	s. 23	83, 84
c. 83, s. 7	15	ss. 25, 26	84
14 & 15 Vict. c. 93	62	s. 28	84, 85
c. 99, s. 2 .. 64, 70		ss. 29, 30	85
s. 3	67	s. 34	56*, 93
15 & 16 Vict. c. 51, s. 48 ..	15	ss. 36, 37	79*
17 & 18 Vict. c. 97, s. 8	15	27 & 28 Vict. c. 53	62
18 & 19 Vict. c. 108, s. 14 ..	69	c. 113, ss. 31, 65	33

B.

b

	PAGE
28 & 29 Vict. c. 121, ss. 4, 5	42
ss. 6, 7, 8, 9, 10, 11, 12,	
13, 15, 16, 17, 18..	43
s. 19	42
ss. 21, 22, 23, 25, 27, 28,	
29	43
s. 31	53*
s. 32	43
s. 33	43, 45*
s. 34 ..43, 45*, 46*, 47*, 77,	
78*	
ss. 35, 36..30, 43, 47*, 51, 85,	
86	
s. 37	43, 48*, 86
s. 38	42
s. 39	29
s. 56	39, 48, 74*
s. 57	39, 41, 48, 72*
s. 60	41
s. 61	76*
s. 62	70*
s. 64	17, 39*, 42, 86
s. 65	87
s. 66	75*
29 Vict. c. 10, s. 3	86
29 & 30 Vict. c. 89, ss. 41, 42	33
30 & 31 Vict. c. ci, s. 12 ..	33
36 & 37 Vict. c. 71, ss. 5, 6, 7	42
s. 8	42, 76, 77*
ss. 9, 10	43
s. 11	18, 73*
s. 13	20, 28
s. 14	19, 87
s. 15	18, 19, 87
ss. 16, 17	30, 81, 88
s. 18 ..38, 39, 40, 41, 48, 51,	
74	
s. 19	17, 88
s. 20	40, 41*, 88
s. 21 ..43, 45, 48*, 49*, 50*,	
51*	

	PAGE
36 & 37 Vict. c. 71,	
s. 2219, 30, 43, 51*, 88	
s. 23	43
s. 24	43, 45, 51*
s. 25	43, 44, 52*
ss. 26—35	43
s. 35	76, 77*
s. 36	43, 53*, 54*, 89
ss. 37, 38	54*
s. 39	17, 38, 43, 89
ss. 40, 41, 42, 43, 44, 45 ..43	
s. 46	89
s. 47	43, 90
ss. 49, 50, 58, 59, 60....	43
s. 56	90
s. 61	43, 90
s. 62	69*
s. 64	76, 77*, 78*
3rd Schedule	48*, 49*
37 & 38 Vict. c. 54, s. 3	16
38 & 39 Vict. c. 77	27
39 & 40 Vict. c. 19	17, 39
s. 456, 57*	
c. 56, s. 4	15
c. 34	33
40 & 41 Vict. c. 65 ..18, 28, 61,	
62*, 79, 96	
c. xviii	33
41 Vict. c. 10, s. 88	29*
c. 11, s. 87	29*
41 & 42 Vict. c. 39, s. 1	36*
s. 2	36*, 52
ss. 3, 4, 5	37*
s. 6	42*
s. 7	43*
s. 8	52*
ss. 9, 10	56*
s. 11	58*, 59*, 96
s. 12	61*, 62*
s. 13	62*, 63*

FISHERY LAWS.

CHAPTER I.

PUBLIC FISHERIES.

Definition of a Fishery.—The term Fishery is used in Law in two different senses: first, as expressing the right an individual or individuals may have to take fish at a particular place; secondly, as referring to the place itself. In the first sense it is used to define the right, in the second the place where the right is exercised.

Public and Private Fisheries.—The first sense is the one which we have to consider,—The right which an individual or individuals have of taking fish at a particular place. This right is divided into two great classes, public and private. A public fishery exists at any place where all the Queen's subjects, as such and without any other qualification, have the right to fish; a private fishery exists where the right of fishing belongs, for some special reason, to an individual or a class of individuals.

Small Extent of Public Fisheries.—In strict law it would seem that the public fisheries in fresh water are very limited; that is, there are very few places where the public are *legally entitled* to fish. There is a large amount of water where the public are *allowed* to fish

without interruption; but these places are really private, the public only fish there on sufferance.

It is therefore important to see what are the places in which the public are entitled as of right to fish.

Rivers Navigable and Non-navigable.—It is usually stated that rivers are divided into two great classes, navigable and non-navigable, and that in a navigable river the public have the right to fish; but this statement must be received with some qualification. From a long series of cases (a) it would appear that in an ancient navigable river, that is a river that has always been navigable from time immemorial, the public have *primâ facie* the right of fishing in that part where the tide ebbs and flows. They may not have the right, as it may by virtue of grant, charter or immemorial user belong to an individual; but it lies on the individual claiming the right to make out his title, and, if he cannot do so, the right belongs to the public. *Carter v. Murcott* (b), and Lord Mansfield's judgment there, pronounced in 1768, settled the law on that point.

Ancient Navigable River above the Tideway.—So far is clear, but a very difficult question arises, Who is entitled to the right of fishing in an ancient navigable river above the tideway? Are the public or the owners of the adjoining land? Curiously enough the point has never been expressly decided by the English courts, though in Ireland (c) and America decisions have been given against the rights of the public. The nearest

(a) The case of *The Banne*, Davies 55; *Carter v. Murcott*, 4 Burr. 2162; *Bagot v. Orr*, 4 B. & P. 472; *Malcolmson v. O'Dea*, 10

H. L. 593.

(b) 4 Burr. 2162.

(c) *Murphy v. Ryan*, Ir. Rep., 2 C. L. 143.

approach to an English decision is the case of *Reg. v. Burrow (d)*. There the defendant claimed a right as one of the public to fish in Ulleswater Lake. It appeared that the lake was navigable, but neither the lake nor the river running out of it were tidal. The defendant was proceeded against under the 24 & 25 Vict. c. 96, s. 24, for illegal fishing, and claimed a right to fish there as one of the public. Notwithstanding this, the justices convicted the defendant. He applied to the Queen's Bench for a certiorari to bring up the conviction to quash it; and, on making the rule absolute, the Lord Chief Justice Cockburn said: "If it had been clearly settled that the public could not have any right to fish in a navigable river above the flow of the tide, it might be different; but I, for one, am not prepared to assent to that proposition without further argument; and though there is recent authority for the proposition, that case (*e*) may be taken by appeal to a higher court; and, in my opinion, it is a point of so much importance, that it should be taken, if necessary, to the very highest court in the realm. Such being the state of the question involved, and seeing that the defendant gave the very highest proof of his bona fides, I think the justices ought to have held their hands; and I must say it is the strongest instance of such a course being necessary that I have ever met with in the course of my experience."

In *Reg. v. Stimpson (f)*, which was a similar case, only that the water was tidal, the court held that the magistrate's jurisdiction was ousted, as the presumption of right was in the defendant's favour.

(d) 34 J. P. 53.

(f) 4 B. & S. 307; 32 L. J.,

(e) *Murphy v. Ryan*, Ir. Rep., M. C. 208.

2 C. L. 143.

Distinction between an ancient Navigable River and a River made navigable by Statute.—It is important, in considering these cases, to distinguish carefully between an ancient navigable river, and a river made navigable by act of parliament. In the latter case, it would seem from the decision in *Hargreaves v. Diddams* (*f*), that the public have no right to fish. There the appellant was convicted by justices for illegally fishing in a private fishery, under the 24 & 25 Vict. c. 96, s. 24. The river was a public navigable one, and had been made so by act of parliament (16 & 17 Car. 2, c. 24, and subsequent acts), and the appellant claimed a right to fish as one of the public. The justices convicted on the ground that the right claimed was such a right as could not exist in law; and that, therefore, their jurisdiction was not ousted, though a claim of right was set up (*g*). The Court of Queen's Bench held, that the justices were right, as the act of parliament making the river navigable did not change the nature of the other rights existing in it; and that a claim by one of the public to fish as one of the public in private waters, had been held in *Hudson v. Macrae* (*h*) to be a right that could not legally exist.

Ownership of Soil in Non-tidal Navigable Rivers.—In *Hargreaves v. Diddams* (*f*) it was proved that the soil of the bed of the river belonged to the adjoining land-owners; and a question of some difficulty often arises as to who is the owner of the soil in non-tidal navigable rivers. In *Williams v. Wilcox* (*i*), Lord Denman says

(*f*) L. R., 10 Q. B. 582.

(*g*) See *White v. Feast*, L. R., 7 Q. B. 353; *Watkins v. Major*, L. R., 10 C. P. 662.

(*h*) 4 B. & S. 585; 33 L. J., M. C. 65.

(*i*) 8 A. & E. 314; 3 Nev. & P. 606.

that the channels of public navigable rivers are always highways. Up to the point reached by the flow of the tide the soil was presumably in the crown; and above that spot, whether the soil at common law was in the crown or the owners of the adjacent lands, is a point, perhaps, not free from doubt (*k*). This question has never been expressly decided, and in different rivers a different rule seems to prevail; thus, in the Thames the ownership of the soil of the river is said to be in the crown throughout its course, while in the Severn the ownership of the soil, even in the estuary, is said to be in the adjacent owners (*l*). The question is most important, for if the soil is in the crown, the public would have *prima facie* a right to fish; while, if it is in the owners of the adjacent lands, the reasoning in the case of *Reg. v. Pratt* (*m*) would indicate that the public have only a right to use the river for navigation, and have no other rights at all.

Fishing from a Road or Bridge.—The question of the ownership of the soil, and the decision in *Reg. v. Pratt*, disposes of two points that are frequently raised, namely, if a bridge crosses a river, or a road runs alongside a river, have the public a right to fish from the road or bridge? It is quite clear they have not. They have no more right than they would have to take the fruit from a fruit tree in a garden adjoining a road. They have the right to use the road for all purposes necessary or incidental for the purposes of locomotion, but they have no right to use it for other purposes apart from those.

Towing Path.—The same rule applies to a towing

(*k*) At p. 333.

(*m*) 4 E. & B. 860; 24 L. J.,

(*l*) *Lord Fitzwalter's case*, 1 Mod. N. S., M. C. 113.

path. The fact of there being a towing path gives the public no right to fish from it; indeed, it may be doubted if they have any rights there, other than to use the towing path for purposes of navigation (*n*).

Right of the Public on the Banks of a Navigable River.]

—In the same way the public, if the banks of the river belong to the owner of the adjoining land, have no right from the banks, although they may have a right to fish in the river. They cannot use the banks either for angling from or for drawing their nets, or for any purpose connected with fishing. There is, it is true, an old case in the reign of Edward IV. (*o*) to the contrary, but this has not been followed (*p*). It would appear, however, that the fishermen of a particular locality, that is a class of persons, might acquire such right by long user; but there seems to be no authority for saying that the public, *quà* public, could acquire any such right. Of course, this limits the right of the public to use a public fishery most materially, as, in a great many localities, the public use the banks of the river as if they were their own, but this is usually by sufferance of the landowner, not by virtue of any right; and there would seem to be no length of time by which the public could acquire this right. At any time the landowner may forbid it, and proceed against the persons as trespassers.

Length of Time will not give a Right.]

—The rule is the same with regard to the fishing. If the public have no legal right, no length of time during which they have been allowed to fish on sufferance will give them such right. In *Hudson v. Macrae* (*q*), it was held that sixty

(*n*) See *Ball v. Herbert*, 3 T. R. 253.

(*o*) Year Book, Trin. 15 Edw. 4, f. 29, A. pl. 7.

(*p*) *Blundell v. Catterall*, 5 B. & Ald. 295.

(*q*) 4 B. & S. 585.

years' uninterrupted user would not suffice; and a long user was proved in *Hargreaves v. Diddams* (r). The permission is revocable at any moment, and no reason need be assigned for revoking it (s).

The rule is the same as to angling as to any other kind of fishing—the law regards fishing as fishing, irrespective of the mode by which it is carried on.

From what has been said, it will be seen that although a public fishery may and does exist in law, yet it is only in very few localities that the public have any right of fishing, and that in the majority of instances when persons angle they do so on sufferance, and are in law liable to be proceeded against; that even where the public have a right to fish it very often happens that the right is practically useless, as it can only be exercised from a boat, the public having no right on the banks. Every year the quantity of water in which the public are allowed to fish becomes less and less, from the owners withdrawing permission; and in a few years' time it will probably be the case that the public are confined to where they have a legal right. And it will then be seen how very small the extent of real public water is, and how difficult it is for the public to exercise their rights over it.

The result of the foregoing chapter may be summarized as follows:—

- (1) A public fishery exists wherever the public as such have the right of fishing;
- (2) This right is called in law a public or common fishery;
- (3) It exists *prima facie* but not necessarily in all

(r) L. R., 10 Q. B. 584.

(s) *Holford v. Bailey*, 13 Q. B. 426.

ancient navigable rivers in which the tide ebbs and flows ;

- (4) If a river has been made navigable by act of parliament, the public have no right to fish in it above the ebb and flow of the tide ;
- (5) If the river is an ancient navigable river, the question as to whether the public have or have not the right to fish above the tideway is one that has never been decided ;
- (6) If such a case comes before justices they ought not to decide it if the right is claimed, as the English courts have not held that such a right cannot exist in law. What authority there is in favour of the legal existence of such a right ;
- (7) The public have no right to fish from a bridge, road, or towing-path ;
- (8) If the public have a right to fish they have not *primâ facie* in non-tidal rivers a right to go on or use the banks for the purpose of fishing ;
- (9) An owner who has allowed the public to fish from or use the banks of the river for fishing can at any time withdraw his permission without assigning any reason ;
- (10) No length of user by the public of the banks of any stream or river for fishing or angling will give them a legal right to such use.

CHAPTER II.

PRIVATE FISHERIES.

Where Private Fisheries exist.—Private fisheries exist—(1) in all non-navigable rivers; (2) in ancient navigable rivers where the tide ebbs and flows, by virtue of grant, charter, or immemorial user; (3) in pools and lakes; (4) in rivers formerly private but made navigable by statute. The point as to how far they exist in ancient navigable rivers above the limit of the tideway has already been noticed.

Kinds of Private Fisheries.—Private fisheries are of three kinds—(1) a several fishery, (2) a free fishery, (3) a common of fishery.

1. *A Several Fishery.*—A several fishery is the exclusive right that the owner of land, or a person deriving his right from the owner of the land, has *primâ facie* to the river and fishery. The law regards a river as so much land covered with water, and belonging to the owner of the adjoining land. If both banks of the river belong to the same person, then he is entitled to the whole; if only one, then only to half, *usque ad medium filum aquæ*. Although the point is disputed, and not free from doubt, the better opinion seems to be that a right of several fishery implies that the owner is also entitled to the soil of the place where the right exists (*a*). In

(*a*) *Seymour v. Lord Courtenay*, 5 Burr. 2814.

Marshall v. The Ulleswater Steam Navigation Co. (b), the Court of Queen's Bench held themselves bound by the authority of *Holford v. Bailey* (c), that the allegation of a several fishery *prima facie* imports ownership of the soil, though they are not necessarily united.

Mayor of Carlisle v. Graham.]—This point was much considered in the case of *The Mayor of Carlisle v. Graham* (d). There the river Eden changed its course; the waters permanently receded from one channel and flowed in another. The corporation had a several fishery in the old channel; had they the same right in the new? The Court of Exchequer held they had not, on the ground that the right of the crown to grant a several fishery to a subject in a tidal river depended on the soil being in the crown by the common law; that if the soil is in a subject, not in the crown, the crown had no power to grant the right; that as in the new channel the soil was not in the crown, therefore the crown could not grant, and the corporation could have no right.

Must be derived from Owner of Soil.]—And from this case it would seem that, although *prima facie* a several fishery implies the ownership of the soil, yet it does not follow that this is necessarily so, as they may be distinct, but that the right of fishery and the ownership of the soil must be derived from a common title.

Can a Several Fishery be lost by Non-user.]—It was also argued in the same case, but the point was not decided, whether a several fishery could be lost by non-user. The court seemed to think that, though the

(b) 3 B. & S. 753; 8 L. T.,
N. S. 416.

(c) 8 Q. B. 1000.
(d) L. R., 4 Ex. 361.

Statute of Limitations did not apply, that it might be so lost.

Merger.]—In another case (*e*), it was held that a several fishery could not be lost by merger in the crown.

Can only be granted by Deed.]—A several fishery can be granted, conveyed, or assigned only by deed; it is an incorporeal hereditament, a profit à prendre, not an easement; any other form of conveyance would be insufficient to pass it at law. It seems that a grant of the soil would *prima facie* include the fishery, but a grant of the fishery would not pass the soil.

May be appurtenant to a Manor.]—It has been held that a several fishery would pass as appurtenant to a manor (*f*). And it would seem that it ought by analogy to pass as appurtenant to land (*g*), but not to a right of pasture (*h*).

Grant of Fishery is prima facie a Several Fishery.]—If a person grants a right of fishery it will be presumed he grants a several fishery, as his grant will be taken most strongly against himself, and a several fishery is the largest kind of fishery known to the law.

Ponds.]—The right the owner of a pond has to the fish in a pond is a several fishery, as the law regards the pond as so much land covered with water.

Farm Tenant's Right.]—If land adjoining a river is let, and no mention is made in the lease of the fishery or the right of fishing, the right belongs to the tenant not to the landlord, if the lease is by deed; but it is

(*e*) *Duke of Northumberland v. Houghton*, L. R., 5 Ex. 127.

(*f*) *Rogers v. Allen*, 1 Camp. 309.

(*g*) Co. Litt. 122 b.

(*h*) *Edgar v. Special Commissioners of English Fisheries*, 23 L. T., N. S. 128; 35 J. P. 822.

doubtful if it does if the lease is by any other mode (i). If the landlord reserves the right to the fishery the exception in the deed operates as a re-grant by the tenant to the landlord.

Rights of Owner of Several Fishery.—The owner of a several fishery can take the fish in it in any way he pleases, provided that the mode is not forbidden by statute. Thus he cannot now kill the fish by dynamite. He can also angle, or give leave to angle, all the year round, irrespective of close time, under the Freshwater Fisheries Act; but he can only take salmon, trout, or char at the times allowed by law.

2. *Free Fishery.*—The second kind of fishery is what is known as a free fishery. It is an exclusive right of fishing belonging to an individual at a place where *prima facie* some one else would be entitled to fish; as, for example, in a tidal navigable river. This right always owes its existence to an express or implied grant from the crown (k). Mr. Justice Willes, in *Malcolmson v. O'Dea* (l), however, stated (m) that a free fishery and a several fishery are the same thing. He says that the confusion that has existed from the time of 7 Hen. 7 (1492) downwards, was settled by the Exchequer Chamber in *Holford v. Bailey* (n), where it was clearly shown that the only substantial distinction is between an exclusive right of fishery, usually called several, sometimes "free" (as in free warren), and a right in common with others, usually called "common of fishery," sometimes free (used as in free port).

(i) But see *R. v. Old Alresford*,
1 T. R. 358.

(k) *Duke of Somerset v. Fogwell*,
5 B. & C. 875.

(l) 10 H. L. 593.

(m) At p. 619.

(n) 13 Q. B. 426.

In effect, a free fishery is a several fishery derived from the crown at a place where *primâ facie* the public have a right to fish. From the cases of *Holford v. Bailey* (o) and *The Mayor of Carlisle v. Graham* (p), it would appear that a free fishery instead of being a separate kind of fishery is a particular kind of a several fishery, namely, a several fishery in a public navigable river, and is therefore subject to all the rights and incidents of a several fishery. This is, however, only the modern view; the old authorities are all the other way. Lord Coke seems to say that it is a right common to the owner of the fishery and the owner of the soil; a view also taken by Lord Mansfield in *Seymour v. Lord Courtenay* (q). Lord Holt takes the same view (r). Blackstone (s) seems to consider it a right of precisely the same nature as a free warren, and says that a man has in a free fishery the property in the fish before they are caught. If Blackstone is right, a free fishery does not pass the ownership of the soil, as it has been held that a grant of free warren does not pass the soil (t). In such a state of authorities it is impossible to say what is really meant by a free fishery, but probably at the present day the opinion of Mr. Justice Willes would be followed.

Importance of the Distinction.—The great importance as to the distinction between a several and a free fishery was as to what was the proper remedy to bring if a person was disturbed in his enjoyment of his fishery. If a several fishery, trespass was the proper form of action;

(o) 13 Q. B. 426.

(p) L. R., 4 Ex. 361.

(q) 5 Burr. 2814.

(r) *Smith v. Kemp*, 2 Salk. 637.

(s) 2 Com. 39.

(t) *Earl Beauchamp v. Winn*,
L. R., 6 H. L. 223.

if a free fishery, no action for taking the fish would lie, and judgment would be arrested even after verdict. All these points, now, are of comparatively small importance, as under the Judicature Act the same action would lie for disturbance of a several as of a free fishery, while, in a criminal case, the same proceedings would be taken as to both. Under the Freshwater Fisheries Act, however, the distinction still possesses importance, as certain powers are given to the owner of a several fishery, e.g. to permit angling during close time, that the owner of a free fishery does not possess.

3. *Common of Fishery.*—The last kind of fishery is what is known as a common of fishery. Strictly speaking, this only exists, like other rights of common, in the tenants of a particular manor. It is a right of precisely the same nature as a common of pasture, of estovers, of turbary. It may, like all other rights of common, exist as appendant, that is annexed to a particular house, so that whoever has the house has the right of fishing; appurtenant in respect of a house to which it has been annexed by express grant; or in gross, when it is severed from any hereditament. It can only from its nature exist in waters within the manor, and it is necessarily confined to the tenants of the manor. It can only be transferred by deed.

A private right of fishery must come within one of three classes—several, free, or common. Usually a right of fishery is a several fishery; free fisheries and common of fisheries are but rarely met with.

Fishery not an Easement.—The result of the legal rule, that a right of fishery is a profit à prendre, not an easement, is that there can be no customary right to take fish in another person's waters. Thus, in *Bland v.*

Lipscombe (u), the Court of Queen's Bench held that a custom could not exist for all the inhabitants of a parish to angle and catch fish in another man's water, as, being a profit à prendre, it might lead to the destruction of the subject-matter to which the alleged custom applied. There are a series of cases, from *Gateward's case (x)* downwards, in which this rule, that there cannot be a custom to have a profit à prendre in alieno solo, is established.

It need hardly be pointed out that a private fishery, be it several or free, may be owned by any number of persons as joint tenants or tenants in common, in the same way that any other real property can be held.

Lord of Manor.—With regard to a fishery belonging to a lord of a manor as such, it would seem that on an enclosure the lord's rights are preserved, as respects enfranchised copyholds, by the statutes 4 & 5 Vict. c. 35, s. 82, and 15 & 16 Vict. c. 51, s. 48. The lord's rights on the extinguishment of rights of common under the Enclosure Acts, and on partitions and exchanges, are regulated by the provisions of the statutes 8 & 9 Vict. c. 118, ss. 105, 106; 12 & 13 Vict. c. 83, s. 7; 17 & 18 Vict. c. 97, s. 8; and 39 & 40 Vict. c. 56, s. 4. There is no presumption of law that the fishery in any waters within the bounds of a manor belongs to the lord of the manor; the presumption, if any, is the other way, and the lord has to prove his right to the fishery (*y*).

Rating Fishery.—Under the old law, rights of fishing, if held separately from the land, were not liable to be rated. By the statute 37 & 38 Vict. c. 54, s. 3, the

(*u*) 24 L. J., Q. B. 155 n; 4 C. & B. 713 n.
(*x*) 6 Rep. 59 b.

(*y*) *Lamb v. Newbiggin*, 1 C. & K. 549.

exemption is abolished, and the right of fishing is made liable to be rated; and either the owner or the occupier can be rated in respect of such right.

Opposite Owners.—If the land on one side a river belongs to one owner, and on the opposite side to another, each has only the right to fish to the centre of the stream; and if either fishes in the half belonging to the other, either by crossing into the other's water or by standing in his own and throwing his line or his net into the other half of the stream, he is a trespasser, and can be proceeded against by action or under the 24 & 25 Vict. c. 96, s. 24. It would, however, seem that there may be cases where the whole river would belong to one owner, as where he has immemorially exercised acts of ownership over the whole bed of the river (z).

(z) See Selwyn's *Nisi Prius*, of ownership see *Williams v. Jones*, 2 M. & W. 326.
 tit. "Fishery." As to evidence

CHAPTER III.

LAW AS TO FISHING IN PUBLIC FISHERIES.

Restriction on Times of taking Fish.]—The law as to fishing in public fisheries consists of two parts: (1) As to the time when fish may be taken; (2) As to the modes whereby they may be taken. Until the Freshwater Fisheries Act, 1878, was passed,—except with regard to salmon, trout, and char in salmon rivers in a salmon fishery district, and eels and lamperns in a salmon river,—a person was at liberty to fish for all kind of fish all the year round. It is true that by various acts of parliament a close season existed on particular rivers, but this was the exception, not the rule. These local acts will be noticed in a subsequent chapter.

(1) As the law now stands no *salmon* may be taken in any water, public or private, between the 1st of September and the 1st of February, both inclusive (*a*), under heavy penalties. If the river is in a fishery district the board of conservators have power to vary (*b*) the time, and this has been done in several districts (*c*).

(2) No trout or char can now be taken in any water in England and Wales between the 1st October and the 1st February, both inclusive, under heavy penalties (*d*). Boards of conservators have, however, power to vary the close time (*e*), and it has been done in several districts (*f*).

(3) In a salmon river, that is, a river frequented by

(*a*) 36 & 37 Vict. c. 71, s. 19.

(*b*) *Ib.* s. 39.

(*c*) For a list, see Appendix.

B.

(*d*) 28 & 29 Vict. c. 121, s. 64.

(*e*) 39 & 40 Vict. c. 19.

(*f*) For a list, see Appendix.

C

18 CH. 3.—*Law as to Fishing in Public Fisheries.*

salmon or the young of salmon, no person may fix any baskets, nets, traps, or devices for taking eels between the 1st of January and the 24th of June, both inclusive (*g*).

(4) No person in a salmon river may place any wheels or leaps for taking lamperns between the 1st of March and the 1st of August (*h*).

(5) No person may, between the 15th March and the 15th June, both inclusive, fish for, catch, or attempt to catch, any freshwater fish, that is, any fish other than pollan, trout, or char, which live in fresh water and do not migrate to the open sea, unless they are caught for scientific purposes, or for bait, or, if in a district where there is a board of conservators established, they have given leave to such person to angle, and the fish have been taken by angling, or the board of conservators have exempted their district from the operation of the Freshwater Fisheries Act (*i*).

(6) No person may take salmon, except with rod and line, during the weekly close season; the time varies in different districts, but it usually is from noon on Saturday to six on the following Monday (*j*).

These are all the general restrictions at present in existence with regard to time.

Prohibited Modes of taking Fish.—With regard to the mode of taking fish in public fisheries there are various restrictions—

(1) No person may use dynamite, or any other explosive substance, to kill fish in the United Kingdom (*k*).

(*g*) 36 & 37 Vict. c. 71, s. 15.

(*h*) *Ib.*

(*i*) Sect. 11.

(*j*) 24 & 25 Vict. c. 109, s. 21.

For a list of those districts where it is otherwise, see Appendix.

(*k*) 40 & 41 Vict. c. 65.

CH. 3.—*Law as to Fishing in Public Fisheries.* 19

- (2) No person may in any non-tidal water place any device to obstruct fish descending the stream (*l*).
- (3) No person can use, or have in his possession, any otter lath, jack wire, or snare light, spear, gaff, strokehall or snatch, for taking salmon, trout, or char (*m*).
- (4) No person may use any fish roe for fishing, or have in his possession any salmon, trout, or char roe (*n*).
- (5) Fish for salmon with a net with a less mesh than the size allowed in the particular fishery district (*o*).
- (6) Use a fixed engine for taking salmon (*p*).
- (7) Fish for salmon within fifty yards above, and one hundred yards below, any weir or dam (*q*).
- (8) Take any unclean or unseasonable salmon, trout, or char (*r*).
- (9) Take any young salmon (*s*).
- (10) Fish for salmon in any fishery district without a proper licence; and if the conservators of the district have adopted the provisions of the Freshwater Fisheries Act as to licences, fish for trout or char without a proper licence (*t*).
- (11) Shoot a draft net for salmon within one hundred yards of another until the first is drawn in and landed (*u*).

(*l*) 36 & 37 Vict. c. 71, s. 15.

(*m*) 24 & 25 Vict. c. 109, s. 8.

(*n*) *Ib.* s. 9.

(*o*) *Ib.* s. 10.

(*p*) *Ib.* s. 11.

(*q*) *Ib.* s. 12, and 36 & 37 Vict. c. 71, s. 17.

(*r*) 24 & 25 Vict. c. 109, s. 14.

(*s*) *Ib.* s. 15.

(*t*) 36 & 37 Vict. c. 71, s. 22.

(*u*) *Ib.* s. 14.

20 CH. 3.—*Law as to Fishing in Public Fisheries.*

- (12) Place lime or noxious material in a salmon river to destroy fish (*x*).
- (13) Place in any salmon river any liquid or solid matter to such an extent as to poison or kill fish (*y*).

It will thus be seen that persons fishing in public fisheries may only take the fish at legal times and by legal modes, the law considering that for the interest of the public themselves a close season should be observed and certain modes of fishing prohibited.

Mesh of Nets.]—But, as a general rule, there is nothing fixing the kind of net or the mesh of net with which fish other than salmon, as defined by the Salmon Acts, may be caught. In certain places—e. g. the Thames and the Severn,—there are local laws fixing the size of the mesh; but there is no general law applicable throughout England on the subject.

Size of Fish.]—There is also no general rule as to the size of fish that may be taken. In most public fisheries the captor has only to consult himself as to whether the fish is large enough to be taken.

(*x*) 36 & 37 Vict. c. 71, s. 13.

(*y*) 24 & 25 Vict. c. 109, s. 5.

CHAPTER IV.

LAW AS TO FISHING IN PRIVATE FISHERIES.

Offences in Private Fisheries.—The same rules that regulate the time and mode of taking fish in public fisheries apply equally to private fisheries; and all the offences above mentioned may be committed equally in both public and private fisheries. In addition to these, there are certain offences which can only be committed in private fisheries. These may be divided into two classes—(1) Under the general law; (2) Under the Salmon Acts.

Those under the general law are as follows:—

Stealing Fish in a Tank, &c.—I. At common law, irrespective of statute, it is now clear that it is a common law larceny (i. e. simple larceny, punishable on indictment) to take live fish, when in a tank, net, or stew (or in any other place than those mentioned in the statute 24 & 25 Vict. c. 96), which is private property, and where they may be taken at the will of the owner at any time. An indictment will also lie for stealing any fish which serve for food when they are dead.

Taking Fish in any Water situate in Land belonging to a Dwelling-house; in a private Fishery elsewhere.—By the Larceny Consolidation Act of 1861, applicable to England and Ireland (24 & 25 Vict. c. 96), it is enacted by the 24th section,—“Whosoever shall unlawfully and wilfully take or destroy any fish in any water

which shall run through or be in any land adjoining or belonging to the dwelling-house of any person being the owner of such water, or having a right of fishery therein, shall be guilty of a misdemeanor;—and whosoever shall unlawfully and wilfully take or destroy, or attempt to take or destroy, any fish in any water not being such as hereinbefore mentioned, but which shall be private property, or in which there shall be any private right of fishery, shall, on conviction thereof before a justice of the peace, forfeit and pay, over and above the value of the fish taken or destroyed (if any), such sum of money, not exceeding five pounds, as to the justice shall seem meet :

Provision respecting Anglers..]—“Provided, that nothing hereinbefore contained shall extend to any person angling between the beginning of the last hour before sunrise and the expiration of the first hour after sunset;—but whosoever shall by angling between the beginning of the last hour before sunrise and the expiration of the first hour after sunset unlawfully and wilfully take or destroy,—or attempt to take or destroy,—any fish in any such water as first mentioned, shall, on conviction before a justice of the peace, forfeit and pay any sum not exceeding five pounds,—and if in any such water as last mentioned, he shall, on the like conviction, forfeit and pay any sum, not exceeding two pounds, as to the justices shall seem meet :

Provision as to Boundaries of Parishes..]—“And if the boundary of any parish, township or vill shall happen to be in or by the side of any such water as is in this section before mentioned, it shall be sufficient to prove that the offence was committed either in the parish, township, or vill named in the indictment or infor-

mation, or in any parish, township, or vill adjoining thereto.”

By this clause there are four offences enacted:—

- (1) Taking or destroying fish in water adjoining or belonging to the dwelling-house [which means actual contact and not separated by a walk and fence (a)] of the owner of the water, or to any one having a right of fishery therein, which is an indictable misdemeanor, punishable by the common law with fine and imprisonment in addition to or in lieu of sureties (b);
- (2) Taking or destroying fish in water being merely private water, or merely subject to a right of fishery, for which a fine not exceeding 5*l.*, besides the value of the fish, is imposed;
- (3) Angling in the day-time in water belonging to a dwelling-house, &c., as in the 1st case, for which the offender is liable to a fine not exceeding 5*l.*;
- (4) Angling in the day-time in private water, as in the 2nd case, which is punishable by a fine of not exceeding 2*l.*

Meaning of Unlawfully.—The word “unlawfully,” as used here, implies without any claim of right or title in the offender. If the offender sets up a claim of right and does so *bonâ fide* and with some show of reason, both of which questions are questions not of law but of *fact* for the justices to determine, the jurisdiction of the justices is ousted (c); and if they proceed, a *certiorari* may be obtained to

(a) *Reg. v. Hodges*, M. & M. 341.

(b) See 24 & 25 Vict. c. 96, s. 117.

(c) *Reg. v. Peak*, 8 L. T., N. S. 536; *Leatt v. Vine*, 30 L. J. (N. S.) M. C. 207; *Cornwell v. Saunders*, 32 L. J. (N. S.) M. C. 6.

bring up the conviction to quash it (*d*), or their decision may be reviewed by a superior court under the statute 20 & 21 Vict. c. 43 (*e*). But however bonâ fide the contention may be, the right claimed must be such a right as can exist in law, otherwise the justices' jurisdiction is not ousted (*f*).

That part of the sea-shore that lies between high and low water mark is within and part of the adjoining county, and the justices of the county have jurisdiction to take cognizance of offences committed thereon, whether the land is covered with water or not at the time the offence was committed (*g*).

The Tackle of Fishers may be seized.]—Sect. 25 enacts,—"If any person shall at any time be found fishing against the provisions of this act, the owner of the ground, water, or fishery where such offender shall be so found, his servant, or any person authorized by him, may demand from such offender any rod, line, hook, net, or other implement for taking or destroying fish which shall then be in his possession,—and, in case such offender shall not immediately deliver up the same, may seize and take the same from him for the use of such owner:—provided, that any person angling against the provisions of this act, between the beginning of the last hour before sunrise, and the expiration of the first hour after sunset, from whom any implement used by anglers shall be taken, or by whom the same shall be so delivered up, shall, by the taking or delivering

(*d*) *Reg. v. Stimpson*, 4 B. & S. 301.

(*e*) See *White v. Feast*, L. R., 7 Q. B. 353; see also *Simpson v. Wells*, 41 L. J., M. C. 105; *Wilkinson v. Goffin*, 33 L. T., N. S. 24. As to liability of servants

where master is asserting a right, *R. v. Theuton*, 23 J. P. 328.

(*f*) *Hudson v. Macrae*, 4 B. & S. 585.

(*g*) See *Embleton v. Brown*, 30 L. T. (N. S.) M. C. 1.

thereof, be exempted from the payment of any damages or penalty for such angling.”

Under this section a summary and very useful power is given to owners of lands, water, or fisheries, to stop trespassers angling in the day-time. Care should be taken in exercising this power, for if it is irregularly done, or more taken than the law allows, the angler would have an action against the person who seized his tackle. It will be observed, therefore:—

- (1) That only the owner, his servant or some person authorized by him can seize; therefore no occupier or tenant of the fishery, for a term of years however long, can do it or authorize any other person to do it;
- (2) The seizure must be made on the owner's ground. If a man is fishing in one field, and on the owner's keeper coming up goes into another, not the property of the same owner, no seizure can be made;
- (3) It is only the implements used for taking or destroying fish—rod, line, hook, net or other implement—that can be taken; not the basket or the fish caught.

With regard to angling, the seizure exempts the angler from any further penalty, civil or criminal. It is not so, however, with a person fishing in any other way; his nets or instruments may be seized, and he is liable to be prosecuted under the 24 & 25 Vict. c. 96, s. 24; or a civil action may be brought against him.

Arrest of Angler.]—An angler in the daytime—that is, between the beginning of the last hour before sunrise and the expiration of the last hour after sunset (*h*)—cannot

(h) 24 & 25 Vict. c. 96, s. 24.

be arrested (*i*); but a person angling at night, or fishing by any other means than angling either by day or night, may be arrested there and then without warrant by any person, and taken at once before a magistrate. The words of the act are "any person," so that he may be either owner, occupier, or any person appointed by them, or a mere stranger.

In addition to these remedies, an angler, if his tackle is not seized, is liable to criminal proceedings or an action. If it is a case of disputed right, and the right be *bonâ fide* asserted, and one that may have a legal existence, then the only remedy the owner of a fishery has is an action, as the magistrate's jurisdiction is ousted. As very often happens, the persons who contest the owner's right are men of straw; and he may have to bring a series of actions against paupers, thereby incurring enormous expense. But each action he brings strengthens his title (*k*); and, having established his title in one or two actions, a Court of Equity would most likely interfere by a bill of peace, and restrain by injunction any class of persons fishing in his fishery under an alleged claim of right. This was done by Lord Hardwicke in the well-known case of *The Mayor of York v. Pilkington* (*l*), where the plaintiff, though he had not established his title at law, had been in possession for a considerable time, was held to be entitled to an injunction to restrain various persons from fishing who claimed a right to fish either as lords of manors or occupiers of adjacent lands. But it is doubtful if an injunction would be granted against an indefinite class, such as the public; the owner's right of action is a *jus in personam*, not a *jus in rem*.

(*i*) 24 & 25 Vict. c. 96, s. 103.

(*l*) 1 Atk. 330.

(*k*) *Reg. v. Stimpson*, 4 B. & S. 301.

In *Paley v. Birch* (*m*), it was held that a person illegally fishing in a several fishery in tidal water was liable to be punished in exactly the same way as if he had fished in a several fishery in fresh water, the Larceny Act applying to taking fish in a private fishery wherever such fishery may be situated.

Property in Fish caught.—If a person illegally take fish, it appears that he, not the owner of the fishery, is entitled to them; and if they are taken by angling, the owner would seem to have no remedy to recover them or their value. If, however, they are taken by any means other than angling, then the owner can recover their value in proceedings under the Larceny Act. The property, however, in the fish seems to belong to the person taking them. This is, of course, subject to the qualification that under certain acts certain kinds of fish—*e.g.* salmon—are forfeited.

Endorsement on Writ.—The proper form of endorsement on a writ in an action for illegal fishing, as given by the Judicature Act, 1875 (*n*), is:—

“The plaintiff’s claim is for damages for infringement of the plaintiff’s right of fishing.”

It would be well in most cases to ask also for an injunction to restrain the defendant from further trespasses.

Breaking down the Dam of a Fishery, &c., or Mill Dam, or poisoning Fish.—The Malicious Injuries Consolidation Act of 1861, 24 & 25 Vict. c. 97, s. 32, enacts,—“Whosoever shall unlawfully and maliciously cut through, break down, or otherwise destroy the dam, flood-gate, or sluice of any fish-pond, or of any water

(*m*) 8 B. & S. 336; 16 L. T., N. S. 410.

(*n*) 38 & 39 Vict. c. 77.

which shall be private property, or in which there shall be any private right of fishery, with intent thereby to take or destroy any of the fish in such pond or water, *or* so as thereby to cause the loss or destruction of any of the fish,—*or* shall unlawfully and maliciously put any lime or other noxious material in any such pond or water, with intent thereby to destroy any of the fish that may then be or that may thereafter be put therein,—*or* shall unlawfully and maliciously cut through, break down, or otherwise destroy the dam or floodgate of any mill pond, reservoir, or pool,—shall be guilty of a misdemeanor, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding seven years and not less than three years,—*or* to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping.”

This section, which only applied to private fisheries, was extended to salmon rivers by the 13th section of the Salmon Fishery Act, 1873 (36 & 37 Vict. c. 71). It is not under it necessary to prove malice against the owner of the property,—the law presumes it (*l*). Persons found committing the offence may be apprehended at once by any person without warrant and taken before a justice of the peace (*m*). Costs of the prosecution will be allowed as in felony (*n*).

The Freshwater Fisheries Act extend the provisions of the Dynamite Act, 40 & 41 Vict. c. 65, to private fisheries, so that it is now penal for any person, even the

(*l*) 24 & 25 Vict. c. 97, s. 58.
 (*m*) Sect. 61.

(*n*) Ibid. s. 77.

owner, to use dynamite or other explosive substance to take fish.

The Annual Mutiny Acts contain special provisions as to officers taking fish without leave. In the Mutiny Act for 1878, 41 Vict. c. 10, the 88th section is as follows:—"For the better preservation of game and fish in or near places where any officers shall at any time be quartered, be it enacted that every officer who shall, without leave in writing from the person or persons entitled to grant such leave, take, kill, or destroy any game or fish in the United Kingdom of Great Britain and Ireland, shall for every such offence forfeit the sum of five pounds."

In the Marine Mutiny Act, 41 Vict. c. 11, the 87th section is as follows:—"For the better preservation of the game and fish in or near places where any officers shall at any time be quartered, every officer who shall, without leave in writing from the person or persons entitled to grant such leave, take, kill, or destroy any game or fish within the United Kingdom, shall for every such offence forfeit the sum of five pounds."

II. The restrictions on fishing in private fisheries imposed by the Salmon Acts, in addition to those mentioned as applying to public fisheries, are as follows:—

- (1) No fixed engine may be used except it was lawfully used in one of the years 1857, 1858, 1859, 1860, 1861, by virtue of grant, charter, or immemorial usage (*o*) ;
- (2) No dam, except fishing weirs or fishing mill-dams lawfully in use in the year 1861, by virtue of grant, charter, or immemorial user, may be used for taking salmon. A fishing weir must—

(o) 24 & 25 Vict. c. 109, s. 11; 28 & 29 Vict. c. 121, s. 39.

have a free gap, and a fishing mill-dam a fish pass, approved by the Home Office, before it can be used (*p*);

(3) No person may catch or disturb salmon when spawning or near the spawning beds. This applies to public fisheries as well; but most, if not all, the salmon spawning grounds are in private fisheries (*q*);

(4) All fixed engines must be removed during the annual close time within thirty-six hours from its commencement (*r*);

(5) During weekly close time, a free passage must be left through cribs, boxes, or cruives (*s*);

(6) No salmon may be caught except with a properly licensed instrument (*t*);

(7) No person may interfere with the free passage of salmon up a river; (*u*);

(8) No person may fish in a mill-dam or near a mill for salmon, nor 50 yards above or 100 yards below a dam, weir, or artificial obstruction, unless there is a fish pass approved by the Home Office (*x*).

There are of course other offences against the Salmon Acts (*y*); but these are the principal that relate to the law of fishing in private waters. It may again be stated, that everything that is an offence in public water is also an offence in private, but the converse is not equally true.

(*p*) 24 & 25 Vict. c. 109, s. 12.

(*q*) Sect. 16.

(*r*) Sect. 20.

(*s*) Sect. 22.

(*t*) 28 & 29 Vict. c. 121, ss. 35, 36; 36 & 37 Vict. c. 71, s. 22.

(*u*) 36 & 37 Vict. c. 71, s. 16.

(*x*) Sect. 17.

(*y*) See Bund's *Law of Salmon Fisheries*, p. 384. There are altogether some fifty-six offences against the Salmon Acts.

CHAPTER V.

LOCAL LAWS AS TO FISHERIES.

Fish on the Sea-shore.—*Primâ facie*, every subject has a right to take fish found upon the sea-shore between high and low water mark; but that general right may be abridged by the existence of an exclusive right in some individual, or by some local law.

There are a variety of private or local acts in force relative to fisheries in particular rivers and districts, and many of the old ones have been wholly or partially repealed by the Salmon Fishery Act, 1861. The principal acts are:—

18 Geo. 3, c. 33, “An Act for the better Preservation of Fish, and regulating the Fisheries in the Rivers Severn and Verniew.”

The Salmon Fishery Act, 1861, repealed this act so far as it related to salmon, but it still remains law as to other fish, and regulates the fisheries of the Severn. Part of the act, which prohibited fishing in the months of June and July with a mesh of less than two and a half inches from knot to knot, is repealed by the Freshwater Fisheries Act, 1878 (*a*).

37 Geo. 3, c. 95, “An Act to amend the Acts made in the 4th year of Queen Anne and the 1st year of the reign of King George I. for the Preservation of Salmon

(*a*) Sect. 12.

and other Fish in the Rivers within the Counties of Southampton and Wilts." This act was repealed so far as related to salmon by the Salmon Fishery Act, 1861, but it appears still to be in force with regard to other fish.

44 Geo. 3, c. xlv, regulating the rivers flowing into the Solway Frith. This was repealed by the Salmon Fishery Act, 1861, except as to Scotland, and to fish other than salmon in England.

46 Geo. 3, c. xix, as to the rivers running into Milford Harbour. This was repealed by the Salmon Fishery Act, 1861, so far as it related to salmon.

The 20 & 21 Vict. c. cxlviii, amended by the 22 & 23 Vict. c. lxx, regulates the fishing in the Tweed and its tributaries, as defined by the ss. 2 and 3 of the last act, the Tweed Fisheries Amendment Act, 1859.

The fisheries of the Thames are regulated by the Thames Conservancy Act, 1857, 20 & 21 Vict. c. cxlvii. Before that act the regulation of the Thames fisheries had been managed by the corporation of London as conservators of the river. By the 52nd section of that act the control of the fisheries was transferred by the corporation of London to the Thames conservators, and the fisheries are now regulated by bye-laws made by the conservators (*b*). In addition to the bye-laws made by the City Corporation on the 4th October, 1785, under the 30 Geo. 2, c. 21, which are still in force, the Thames conservators in January, 1860, made an amended bye-law in lieu of the 16th of those, ordaining that "no person shall use any net for the purpose of catching fish in the river Thames between Richmond

(*b*) See *Turnidge v. Shaw*, 3 E. & E. 588; 30 L. J. (N. S.) M. C. 113; 3 L. T., N. S. 847; 25 J. P. 294.

bridge and the City stone at Staines, except a small net for the purpose of taking bait only, of the following dimensions, namely, not exceeding thirteen feet in circumference, and an angler's landing net, under penalty to forfeit and pay five pounds for every such offence."

The bye-law as to the close season is made under the authority of the acts 20 & 21 Vict. c. cxlvii; 27 & 28 Vict. c. 113, ss. 31, 65; 29 & 30 Vict. c. 89, ss. 41, 42; and 30 & 31 Vict. c. ci, s. 12. It is as follows:—

The following respective periods shall be deemed to be the fence season in the upper river; that is to say—

- (a) For salmon, salmon-trout, and trout, the period between the 10th day of September in each year and the 31st of March following, both inclusive (c);
- (b) For pike, jack, perch, roach, rudd, barbel, bream, chub, carp, tench, grayling, gudgeon, pope, dace, crayfish, bleak, minnows, and every kind of fish known as river fish (except salmon, salmon-trout, and trout), the period between the 14th of February in each year and the 31st day of May following, both inclusive.

In *Woodhouse v. Etheridge* (d), it was decided that eels were included in the words "every kind of fish known as river fish."

By the 39 & 40 Vict. c. 34, a close time for elvers or the fry of eels is fixed within the Severn fishery district.

By the 40 & 41 Vict. c. xcviii, the Norfolk and Suffolk fisheries are placed under the control of a board of conservators, who have power to make regulations as to the fisheries in their counties.

(c) If salmon were ever taken in the Thames, the legality of this bye-law is extremely questionable.

(d) L. R., 6 C. P. 570.

CHAPTER VI.

THE FRESHWATER FISHERIES ACT, 1878 (a).

THE Freshwater Fisheries Act, 1878, although in itself a very short measure of thirteen clauses, yet deals with no less than sixty-seven sections of various Acts of Parliament.

Its original object was to give a close time for such freshwater fish as are not included in any existing law, but in its passage through Parliament considerable alterations were made in it, and it now includes three distinct matters.

I. It amends and extends the Salmon Fishery Acts :

(1) In making the 8th and 9th sections of the Salmon Fishery Act, 1861, which forbid using lights, spears and other prohibited instruments, and fish roe as bait, apply to all waters in England and Wales;—Up to this time they had only applied to trout and char in a salmon river in a fishery district.

(2) In extending the 64th section of the Salmon Fishery Act, 1865, which gives a close time for trout and char in salmon rivers in a fishery district, to all waters in England and Wales;—Therefore no person can kill trout or char after the 1st October and before the 2nd February, unless the time has been altered by some bye-law made by a board of conservators.

(3) It extends the power given by the Salmon Fishery

(a) 40 & 41 Vict. c. 39. [8 Aug. 1878.]

Act, 1876, to boards of conservators to make bye-laws altering the close time for trout, to alter the close time for char as well.

- (4) It extends the powers given by the Salmon Fishery Acts of 1865 and 1873 to water bailiffs which (except the 38th section of the Act of 1873) had only relation to salmon and salmon rivers, to trout and char, and all waters frequented by salmon, trout and char.
- (5) It extends the powers given by the 36th section of the Salmon Fishery Act, 1861, to a magistrate to grant a search warrant if there is ground to suspect that any breach of the Salmon Fishery Acts has been committed on any premises, or that any salmon illegally taken or illegal nets or engines are concealed therein, and to authorize the seizure of such salmon and nets, to all offences under the Freshwater Fisheries Act, and to all trout, char, and freshwater fish.
- (6) It provides that fishery districts may be formed for waters containing trout or char;—Previously this could only be done if the rivers were “frequented by salmon or the young of salmon.”
- (7) It empowers boards of conservators to grant licences not only for fishing for salmon, as heretofore, but also for fishing for trout or char.
- (8) It extends the somewhat exceptional legal procedure under the Salmon Fishery Acts to proceedings under the Freshwater Fisheries Act, *e.g.* minimum penalties, disqualification of justices, &c.

- II. It makes the use of dynamite or other explosive substances for killing fish illegal by any one in all waters in England and Wales.
- III. It prohibits the capture or sale of all freshwater fish that do not migrate to the open sea, except pollan, trout and char, between the 15th March and the 15th June.

This is what the act *proposes* to do, but owing in some cases to unskilful drafting, and in others to the confusion of the existing law, in some it falls short of its professions, and in others it produces results that were probably not intended by its promoters.

The Act is as follows:—

AN ACT FOR THE PROTECTION OF FRESHWATER FISH.

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows:

Short Title.—1. This act may be cited as "The Freshwater Fisheries Act, 1878."

Construction.—2. This act shall, so far as is consistent with the tenour thereof, be read as one with the Salmon Fishery Acts, 1861 to 1876.

This clause will give rise to some difficulties. As the act is to be read as one with the Salmon Fishery Acts, does it apply wherever the Salmon Fishery Acts apply? And does it incorporate all the clauses of the Salmon Fishery Acts that are not inconsistent with it? For instance, if an officer of a board of conservators lays an information against a person for using dynamite, if it is in private water, will the board get the penalty? Again, will a conviction under this act count as one under the Salmon Acts, so as to render the licence of the offender forfeited, as if A. is convicted under the Salmon Acts for using a net with an illegal mesh, and under this act for taking white fish out of season, is his licence forfeited?

Extent.—3. This act shall not extend to Scotland or Ireland, nor, except as regards sub-sections four and five

of section eleven, and as regards section twelve, to the counties of Norfolk and Suffolk, and the county of the city of Norwich.

These sub-sections are those as to the possession and sale of fish during close time, from the 15th March to 15th June, and the penalty for this offence. Section 12 is the prohibition as to the use of dynamite. Possession of fish during close time, and the use of dynamite, are therefore illegal throughout England and Wales. This clause gives rise to several difficulties. The act extends to the whole of England and Wales, except Norfolk, Suffolk, and Norwich. The Salmon Fishery Acts extend to all England and Wales, except the Tweed, as defined by the Tweed Fisheries Amendment Act, 1859, and also to the river Esk, in Scotland. Does this act extend the Salmon Fishery Acts into the Tweed? and do they extend it to the Esk? or does this act except Norfolk, Suffolk, and Norwich from the provisions of the Salmon Acts as amended by it?

Commencement.]—4. This act shall come into operation from and immediately after the thirty-first day of December one thousand eight hundred and seventy-eight.

As the act comes into operation so late, those boards of conservators who determine to adopt its provisions as to licences will hardly be able to bring it into operation in the fishing season of 1879. It need scarcely be said that no resolution can be passed nor anything done under this act until the 1st of January, 1879.

Extension of Provisions of Salmon Fishery Acts relating to Trout and Char.]—5. Sections eight and nine of the Salmon Fishery Act, 1861, (which relate to fishing with lights, spears, and other prohibited instruments, and to using roe as a bait,) and section sixty-four of the Salmon Fishery Act, 1865 (which provides a close time for trout and char), shall, as amended by the subsequent Salmon Fishery Acts, apply to trout and char in all waters within the limits of this Act; and the term "salmon river," as used in section sixty-four of the Salmon Fishery Act, 1865, shall include any such water.

The sections, as altered by the various Salmon Fishery Acts, are

given below. It will be noted, that if the water is in a district a gaff can only be used at such times as its use is not prohibited by any bye-law (a); that the written consent of the Fishery Board is required to make the possession of roe for scientific purposes legal; that the close time for trout and char may be varied by a bye-law; if not in a district, a gaff may be used whenever angling is lawful; a person who has roe in his possession has only to give a reason satisfactory to the court; and the close season for trout and char cannot be altered from the 2nd October to the 1st February.

Whether in a fishery district or not the sale of trout and char is illegal between the 2nd October and the 1st February, and there is no power to alter this.

Penalty on Fishing with Lights, Spears, &c.—8. No person shall do the following things or any of them; that is to say,

- (1) Use any light for the purpose of catching salmon, trout, or char :
- (2) Use any otter lath, or jack, wire, snare, spear, gaff, strokehall, snatch, or other like instrument for catching or killing a salmon, trout, or char :
- (3) Have in his possession a light or any of the foregoing instruments under such circumstances as to satisfy the court before whom he is tried that he intended at the time to catch or kill salmon, trout, or char (b) by means thereof :

And any person acting in contravention of this section shall, [for a first offence,] incur a penalty not exceeding five pounds; [for a second offence, a penalty of not less than two pounds ten shillings, and not exceeding five pounds, and, if a licensee, forfeit his licence; for a third or any subsequent offence, a penalty of five pounds, or, instead of being fined in a pecuniary penalty, may be sentenced to imprisonment, with or without hard labour, for any period not exceeding six months, nor less than one month, and, if a licensee, forfeit his licence.]

And any person convicted of acting in contravention of this section shall, [on the first and every other conviction,] forfeit any instruments used by him or found in his possession in contravention of this section; but this section shall not apply to any person using a gaff as auxiliary to angling with a rod and line, [provided that its use at such time is not prohibited by any bye-law duly made under the provisions of the Salmon Fishery Act, 1873] (c).

Penalty on using Roe as a Bait.—9. No person shall do the following things or any of them; that is to say,

- (1.) Use any fish roe for the purpose of fishing :

(a) For a list of these, see Appendix.

(b) 23 & 29 Vict. c. 121, s. 64.

(c) 36 & 37 Vict. c. 71, s. 39.

- (2.) Buy, sell, or expose for sale, or have in his possession, any salmon roe, *trout or char* roe :

And any person acting in contravention of this section shall, [for the first offence,] incur a penalty not exceeding two pounds; [for the second offence, a penalty not less than one pound, and not exceeding two pounds, and, if a licensee, forfeit his licence; for the third offence, a penalty of two pounds, or, instead of being fined in a pecuniary penalty, be sentenced to imprisonment, with or without hard labour, for any period not exceeding six months, and not less than one month, and, if a licensee, forfeit his licence (d)]. And any person acting in contravention of this section shall, on [the first and every other conviction,] forfeit all salmon, *trout or char* roe found in his possession; but this section shall not apply to any person who uses or has in his possession salmon, *trout or char* roe for artificial propagation or other scientific purposes, or gives any reason satisfactory to the court by whom he is tried for having the same in his possession. *Provided that, if within a district subject to a board of conservators, the consent of the board has been given in writing to such use or possession of salmon, trout or char roe (e).*

Partial Application of Salmon Acts to Trout in Salmon Rivers. 64.]—[Except in any fishery district where the provisions of this section have been varied by any bye-laws made in pursuance of the Salmon Fishery Act, 1876] (f), no person shall fish for, catch, or attempt to catch, or kill any trout or *char* (g) between the second day of October (g) and the first day of February following, both inclusive; and any person wilfully killing any trout or *char* during such interval as aforesaid shall forfeit any trout or *char* caught by him, and shall, in addition thereto, be liable to a penalty not exceeding two pounds [for the first offence; not less than one pound and not exceeding two pounds for the second offence, and if a licensee forfeit his licence; and of two pounds, and if a licensee forfeiture of licence (h), for the third and every subsequent offence:] provided always, that nothing herein contained shall apply to any person having in his possession trout or *char*, or trout or *char* roe for the purpose of artificial propagation or other purpose, if such person has the permission in writing of the board of the district in which the river runs, [if such river is situate within fishery district,] from whence such trout or *char*, or trout or

(d) 28 & 29 Vict. c. 121, ss. 56 and 57.

(e) *Ib.* s. 60.

(f) See 39 & 40 Vict. c. 19, post, p. 57; for a list, see Ap-

pendix.

(g) 36 & 37 Vict. c. 71, s. 18.

(h) 28 & 29 Vict. c. 121, ss. 56 and 57; 36 & 37 Vict. c. 71, s. 68.

40 CH. 6.—*The Freshwater Fisheries Act, 1878.*

char roe, has been taken to catch such trout or *char*, and to have in his possession such trout or *char*, or trout or *char* roe, for the purposes aforesaid.

It will be noted that only the fish are forfeited, not the instruments with which they are caught. So that, if these are seized, an action will lie for wrongful seizure.

In addition to these provisions, the following sections of the Salmon Fishery Acts apply to trout and *char*: section 14 of the Act of 1861, as amended by the Act of 1873, makes the killing, injuring or taking, or the attempt to kill or injure, unclean or unseasonable trout or *char* penal. Section 20 of the Act of 1873 makes the sale, or the possession for sale, of trout or *char* during fence time illegal. These sections are as follows:—

Penalty on taking unclean Fish.—14. No person shall do any of the following things; that is to say,

- (1) Wilfully take, *kill, or injure, or attempt to take* (i), any unclean or unseasonable salmon, trout, or *char* :
- (2) Buy, sell, or expose for sale, or have in his possession, any unclean or unseasonable salmon, trout, or *char*, or any part thereof :

And any person acting in contravention of this section shall incur the following penalties; that is to say,

- (1) He shall forfeit any fish taken, bought, sold, or exposed for sale, or in his possession :
- (2) He shall incur a penalty not exceeding five pounds [*for each such [first] offence, and a further penalty of one pound in respect of each fish taken, sold, or exposed for sale, or in his possession* ; for a second offence, a penalty of not less than two pounds ten shillings and not exceeding five pounds, and a further penalty of not less than ten shillings, and not exceeding one pound, in respect of each fish taken, sold, or exposed for sale, or in his possession, but it shall not be imperative to inflict a greater penalty than fifty shillings in the whole, and, if a licensee, shall forfeit his license ; for a third offence, a penalty of five pounds, and a further penalty of one pound in respect of each fish taken, sold, or exposed for sale, or in his possession ; but it shall not be imperative to inflict a greater pecuniary penalty than five pounds in the whole ; or on conviction for a third and any subsequent offence, instead of being fined in a pecuniary penalty, may be sentenced to imprisonment with or without

(i) 36 & 37 Vict. c. 71, s. 18.

hard labour for any period not less than one month and not exceeding six months, and forfeiture of licence; and for every subsequent offence a penalty of five pounds, and a further penalty of one pound in respect of each fish taken, sold, or exposed for sale, or in his possession, and, if a licensee, shall forfeit his licence, or be imprisoned for not less than one nor more than six months (*k*).

But this section shall not apply—

- (1) To any person who takes such fish accidentally, and forthwith returns the same to the water with the least possible injury:
- (2) To any person who takes or is in possession of such fish for artificial propagation or other scientific purposes, [if within a district for which a board of conservators is established, with the consent of the board in writing for such taking or possession (*l*)].

A difficulty will arise under this section as to what is an unclean or unseasonable trout or char. As to unseasonable, it would seem to be a trout or char, whatever its condition, caught out of season, that is, during the close time in force at the place where it was caught (i.e. from the 1st October to 2nd February, unless the time is varied by a bye-law). But an unclean trout or char is more difficult to define. As to salmon, it means a fish that has not migrated to the sea after spawning (*m*); but as trout and char do not migrate, it must, in each case, be a matter of fact for the court to decide whether the fish have so far recovered from spawning as to be fit to be taken, and this irrespective of whether the fish is taken in the open or close season.

Penalty on Selling Trout or Char during Close Time.—20. No person shall buy, sell, or expose for sale, or have in his possession for sale, any trout or char between the second day of October and the first day of February following, both inclusive; and any person acting in contravention of this section shall forfeit any trout or char so bought, sold, or exposed for sale, or in his possession for sale, and shall [for a first offence] incur a penalty not exceeding one pound for every such trout or char; [for a second offence, of not less than ten shillings, and not exceeding one pound for every such trout or char, provided that it shall not be imperative to inflict a greater fine than fifty shillings, and if a licensee, forfeiture of licence; for a third offence, a penalty of one pound for every such trout or char, provided that it shall not be imperative to inflict a greater fine than five pounds, and if a licensee, forfeiture of licence; for every subsequent offence a penalty

(*k*) 28 & 29 Vict. c. 121, s. 57;
36 & 37 Vict. c. 71, s. 18.

(*m*) See Bund's Law of Salmon Fisheries, p. 336.

(*l*) 28 & 29 Vict. c. 121, s. 60.

of one pound in respect of every such trout or char, and if a licensee, forfeiture of licence (n)].

The Act of 1876 contains no power to vary the time during which the sale of trout or char is lawful; therefore, although the capture of trout or char after the 1st October may be lawful, the sale is not, and anyone selling trout or char between the dates here given, wherein the Salmon Acts apply, is guilty of an offence, as the close season can, under the Act of 1876, be extended after the 2nd February. Where this is done, it may be legal to sell, but illegal to catch, trout or char in a particular place. On the Dee, the sale of trout and char and their capture by nets, after the 2nd of February, is legal, but their capture by rod and line illegal!

Formation and Dissolution of Fishery Districts in Trout and Char Rivers.—6. The provisions of the Salmon Fishery Acts, 1865 and 1873, which relate to the formation, alteration, combination, and dissolution of fishery districts, and to the appointment, qualification, proceedings, and powers of conservators, shall extend and apply to all waters within the limits of this act frequented by trout or char; and the term "salmon river" in the fourth and nineteenth sections of the Salmon Fishery Act, 1865, and in the twenty-sixth section of the Salmon Fishery Act, 1873, shall mean any river frequented by salmon, trout, or char.

For some reason the draftsman of the bill instead of saying that the term "salmon river" in the interpretation clause of the Act of 1865 shall mean any river frequented by salmon, trout, or char, and thereby give that meaning to it whenever it occurs throughout the act, has chosen to confine it to the 4th section (power to justices of county to apply for formation of fishery districts), 19th (provision as to a common estuary), and the 26th section of the Act of 1873 (ex officio members); the result, therefore, is that the interpretation clause of the Act of 1865 gives it a meaning it does not possess except in the 46th section of the Act of 1873. It has one meaning in two sections of the Act of 1865, and another in the 64th section of that Act, and the 36th, 37th and 38th sections of the Act of 1873, where it would seem to include ponds; while in the 46th section of the Act of 1873 it has its original meaning of a river frequented by salmon or the young of salmon.

The sections as to fishery districts are:—Salmon Fishery Act, 1865, ss. 4, 6, 19, 38; Salmon Fishery Act, 1873, ss. 5, 6, 7, 8.

(n) 28 & 29 Vict. c. 121, ss. 56 and 57; 36 & 37 Vict. c. 71, s. 18.

CH. 6.—*The Freshwater Fisheries Act, 1878.* 43

As to the appointment and qualification of conservators:—Salmon Fishery Act, 1865, ss. 6, 7, 8, 9, 10, 11, 12, 13, 15, 16, 17, 18; Salmon Fishery Act, 1873, ss. 9, 10, 26, 27, 28, 29, 30, 31, 32, 33.

As to the proceedings and powers of conservators:—Salmon Fishery Act, 1865, ss. 21, 22, 23, 25, 27, 28, 29 generally, 33, 34, 35, 36, 37 as to licences; Salmon Fishery Act, 1873, ss. 34, 35 and 47 generally, 21, 22, 23, 24, 25 and 57 licences, 39, 40, 41, 42, 43, 44, 45 bye-laws, 49 and 50 as to weirs, 58, 59, 60 and 61 as to gratings.

All these clauses are printed in full and commented on in Bund's Law of Salmon Fisheries.

Provisions as to Licences.—7. In any fishery district subject to a board of conservators, the conservators shall have power to issue licences for the day, week, season, or any part thereof, to all persons fishing for trout or char, and, in the event of the power being exercised in any fishery district, the provisions of the thirty-third, thirty-fourth, thirty-fifth, thirty-sixth, and thirty-seventh sections of the Salmon Fishery Act, 1865, and of the twenty-first, twenty-second, twenty-fourth, and twenty-fifth sections of the Salmon Fishery Act, 1873 (relative to licences), shall, with respect to such district, be construed as if the words "trout or char" were inserted throughout after the word "salmon."

Provided as follows:

- (1) A licence to fish for salmon shall have effect as a licence to fish for trout and char:
- (2) The fee payable for a licence to fish for trout or char exclusively of salmon in any district shall not exceed one third of the maximum amount chargeable for fishing for salmon under the provisions of the 21st section of the Salmon Fishery Act, 1873.

The words "for the day, week, season, or any part thereof," are not found in the Salmon Fishery Acts, and are, it is presumed, inserted here to remove a doubt if the conservators have power to issue such licences. It is doubtful if the power extends to licences for salmon, and is not confined to licences for trout or char. As the conservators have the power to do so, it would seem that if they deter-

mine to issue licences at all, they must fix a sum for licences for the day, week, season, or any part of it.

The sections of the Salmon Acts are printed below.

It will be observed that a salmon licence authorizes a person to fish for trout or char without taking out a separate licence, just as a 37. game licence authorizes a person to use a gun without taking out a gun licence.

The maximum sums chargeable for licences are given in the schedule to the Act of 1873. It will be seen that only certain instruments are named in the schedule. As to the others the board fix the sum payable, subject to the approval of the Secretary of State.

If no sum is fixed for an instrument for taking salmon, or if it is an instrument not used for the capture of salmon, it would seem doubtful if a licence can be fixed, as only the instruments named and instruments used for taking salmon, trout, or char can be licensed; and if an instrument is never used for taking salmon, but is used for taking trout and char, it would be doubtful if the insertion of the words "trout and char" after salmon in the Salmon Act would authorize such an engine to be licensed; for it will be noted, that the act does not license any new engines or authorize any such to be licensed. All it does is to extend the licence system to engines already requiring a licence for salmon to trout and char.

Another point of construction will give rise to some difficulty. The 25th section of the Act of 1873 authorized a board of conservators to vary the licence duty payable in respect of different instruments in different parts of the district. Is the maximum charge for a trout licence to be one-third of the maximum sum payable throughout the district, or in that part where the licence was issued? Thus the maximum for a net, if used in the whole of a district, might be two pounds, if used only in a certain part ten shillings. Is the *maximum* chargeable for trout to be a third of two pounds or of ten shillings? It would seem that the maximum would be the third of two pounds, as that is the maximum chargeable under the 21st section of the Act of 1873; but then this result may follow, that a licence for trout may exceed the sum chargeable for a licence for salmon, and that is obviously contrary to the intention of the act. It is one of the many points under the act that can only be settled by judicial interpretation.

Another point, and one of still greater importance, arises,—what instruments require to be licensed? This point is practically settled by the case of *Lyne v. Leonard* (o), where the Court of Queen's Bench held that the meaning of the 33rd section of the Act of 1865 was that a licence should be granted to a man who uses any device named in the act by which salmon may be caught, not only to one who uses a device for the purpose of catching salmon, or who tries to catch salmon. Therefore, if this is good law—and in a subsequent case (p) the court adhered to it—in a river in a fishery district where trout are found, and where the conservators determine to enforce this clause as to licences, all instruments by which trout may be caught, whether used for the purpose of catching trout or not, will require a licence; so that, in such a place, all anglers will require a licence if fishing in

(o) L. R., 3 Q. B. 156.

(p) *Watts v. Lucas*, L. R., 6 Q. B. 226.

a way by which trout may possibly be caught. A person fishing for pike with a dead gorge would not require a licence; but a person spinning with a minnow would. The question is not one of law, but of fact, which the justices will have to decide in each case.—Could a trout be possibly caught? if so, a licence is required. With regard to nets, the same rule will apply. Under the Salmon Acts if a man used a net with a mesh smaller than the legal salmon mesh, the presumption was he did not intend to catch salmon, and so no licence was required; but as this act does not specify any mesh to be used in fishing for trout, and if there are trout in a river any net may possibly catch them, a licence will now be required in all cases.

The 21st section of the Salmon Fishery Act, 1873, above referred to, should have been the 24th, which is the section that fixes the maximum duty.

The sections of the Salmon Fishery Act as to licences are as follow:—

Licences.

Issue of Licences.—33. In any fishery district subject to the control of a board of conservators licences shall be granted at fixed prices to all persons using any rod and line for fishing for salmon, trout, or char, and in respect of all fishing weirs, fishing mill dams, putts, putchers, nets, or other instruments or devices, except rods and lines, whereby salmon, trout, or char are caught; and the produce of such licences shall be applied in defraying the expenses of carrying into effect in such district the Salmon Fishery Acts, 1861 and 1865 (g).

It would seem that the money derived from the sale of licences under the Freshwater Fisheries Act can only be used for the purpose here mentioned, as the 23rd section of the Act of 1873 is by the Freshwater Fisheries Act expressly left out in the enumeration of the sections in which the word "salmon" is to include trout and char. Unless it is held that the 2nd section of the Freshwater Fisheries Act, providing that that act shall be read as one with the Salmon Acts, includes this, but on the principle, *expressio unius exclusio alterius*, this can hardly be so.

Rules as to Licences.—34. The following rules shall be observed with respect to the licences granted in pursuance of the act, that is to say:—

[1 and 2 are repealed by the Salmon Fishery Act of 1873.]

- (3) The approval of the said Secretary of State to a scale of licences for fishing weirs, fishing mill dams, putts, putchers, nets, and other instruments or devices as aforesaid, shall not be given for any district unless one month's previous notice of the intention of the board to apply for such approval has been given by advertisement, stating the scale of licence duties proposed by the conservators, in some one or more public newspaper or newspapers circulating in the district:

- (4) Any person for the time being entitled to an exclusive right of fishing for salmon, *trout*, or *char* in any river or part of a river may, upon application to the conservators of the district, obtain a general licence; and such general licence shall enable the licensee or any person authorized by him in writing under his hand, without any other licence, to fish for salmon, *trout*, or *char* in any legal manner in such river or part of a river, but it shall not be of any validity beyond the limits to which it refers: There shall be paid for such general licence such sum as the conservators may from time to time determine, with the sanction of the said Secretary of State, having regard to the extent and productiveness of the fishery, and to the nature of the instruments or devices used for catching fish:
 - (5) All persons demanding to purchase licences, and tendering to any person appointed by the board to distribute the same, the amount of licence duty to be paid under the provisions of this Act, shall be entitled to receive the same without any question or objection whatsoever. But no licence shall confer any right to fish in any place or at any time in or at which the licensee is not otherwise entitled to fish; nor shall the grant of a licence be held to make any fishing weir, fishing mill dam, putts, putchers, net, or other instrument or device legal that would otherwise be illegal, or to imply any recognition of the legality of any such instrument:
 - (6) All licences granted in pursuance of this act shall be available only during the fishing season of the year for which they are granted:
- This is to be qualified by the words in the seventh section of the Freshwater Fisheries Act, authorizing licences for the day, week, season, or any part thereof. They will of course only be available for the time named in them.
- (7) Licences granted in pursuance of this act shall be issued by the conservators of each district in such form as may be approved by the Secretary of State, and be distributed in such manner as they may from time to time direct:
 - (8) The conservators of a district shall, on their first appointment, give notice, by advertisement in one or more newspaper or newspapers published or circulating in their district, of a time, not being less than three months after such appointment, at the expiration of which it will be illegal to fish for salmon in that district without a licence, and shall state in

the notice a place or places within their district where licences may be procured; and the production of a copy of a newspaper containing any such advertisement as aforesaid shall be conclusive evidence, as respects a fishery district, of due notice having been given of the time after which it will be illegal in that district to fish for salmon without licences.

A question arises as to whether, under this section of the Act of 1865, three months' notice is necessary before it is illegal to fish for trout or char without a licence. It is clear that it is so in any district formed after the passing of the act; but if the district is already formed, and the capture of salmon there without a licence is illegal, is it necessary? It would seem not, as the 7th section of the Freshwater Fisheries Act says the sections are to be read as if the words trout or char immediately followed the word salmon. It is, however, by no means clear, and it is important to ascertain; for if it is necessary to give this notice, the act, so far as licences are concerned, cannot come into operation in 1879.

Penalty on fishing with Rod without Licence.—35. From and after a time to be appointed as aforesaid in a fishery district, any person fishing in that district with a rod and line for salmon, trout, or char without a proper licence shall be liable to a penalty of not less than double the amount to be paid for the requisite licence, and not exceeding five pounds [on a first conviction; of not less than fifty shillings, or double the amount of the licence duty, and not exceeding five pounds, and, if a licensee, forfeiture of licence for a second; of not less than five pounds, or double the amount of licence duty, and forfeiture of licence, if a licensee, for a third offence (g)].

Penalty on fishing at Weirs or with Nets without Licence.—36. From and after a time to be appointed as aforesaid in a fishery district, any person using within that district any fishing weir, fishing mill dam, putt, putcher, net, or other instrument or device, not being a rod and line, for catching salmon, trout, or char, without having a proper licence for the same, shall be liable to a penalty of not less than double the amount to be paid for the requisite licence, and not exceeding twenty pounds [for a first offence; of not less than fifty shillings, or double the amount of licence duty, and not exceeding twenty pounds, and if a licensee forfeiture of licence, for the second offence; of not less than five pounds, or double the amount of licence duty, and not exceeding twenty pounds, and if a licensee forfeiture of licence, for the third offence; and of twenty pounds, or double the

(g) 28 & 29 Vict. c. 121, s. 57; 36 & 37 Vict. c. 71, s. 18.

48 CH. 6.—*The Freshwater Fisheries Act, 1878.*

amount of licence duty, whichever is the highest, and forfeiture of licence, for the fourth and every subsequent offence (r)].

Production of Licence.—37. Any licensee under this act on producing his licence, any conservator on producing a certificate of his being a conservator, or any water bailiff appointed in pursuance of this act, on producing the instrument appointing him, or any constable, if authorized so to do by the justices in quarter sessions, may require any person found fishing with a rod and line, fishing weir or fishing mill dam, net or other instrument, to produce his licence; and the person required to produce the same shall, if he do not produce the same, or make a reasonable excuse for the nonproduction thereof, be liable to a penalty not exceeding one pound [for the first offence; of not less than ten shillings and not exceeding one pound, and if a licensee forfeiture of licence, for the second offence; and of not less than one pound, and if a licensee forfeiture of licence, for the third and every subsequent offence (s)].

The 56th section of the Salmon Fishery Act, 1865, makes a licensee, who is convicted a second time for an offence against the Salmon Fishery Acts, forfeit his licence. The sections in the Salmon Fishery Act, 1873, as to licences, are the following:—

Provisions as to Licences.—21. The following Rules shall apply to the issuing of licences:

- (1) Licences for fishing weirs, fishing mill dams, putts, putchers, fixed nets, and other fixed instruments or devices, and for moveable nets and other moveable instruments or devices, and also for rods and lines for catching salmon, trout, or char within a fishery district, shall be granted on payment of such sums, not exceeding [the sums following], as the board of conservators of the district, with the sanction of the Secretary of State, may from time to time determine (t):

For each and every— £ s. d.

„ Weir, hang, baulk, garth, goryd, box, crib, or cruipe.	12	0	0
„ Draft or hang net, not exceeding 200 yards in length measured along the head-rope when wet	5	0	0
„ Ditto, exceeding 200 yards, for every additional 40 yards or part thereof .	1	0	0

(r) 28 & 29 Vict. c. 121, s. 57; 36 & 37 Vict. c. 71, s. 18. (s) 28 & 29 Vict. c. 121, ss. 56, 57; 36 & 37 Vict. c. 71, s. 18. (t) 36 & 37 Vict. c. 71, s. 21.

CH. 6.—*The Freshwater Fisheries Act, 1878.* 49

For each and every—	£	s.	d.
„ Coracle net	2	5	0
„ Putt	0	3	6
„ Outrigger or leader to putts and putchers, not exceeding 100 yards in length	2	0	0
„ Ditto, exceeding 100 yards, for every additional 20 yards or part thereof	1	0	0
„ Cross line	2	10	0
„ Single rod and line	1	10	0
For putchers or butts, if not exceeding 50 in number	1	10	6
For every additional 50 or part thereof	1	10	6
For any instrument or device not named above, such sum as may be determined by the board of conservators, with the sanction of the Secretary of State (u).			

- (2) Licences shall only be available within the fishery district for which they are granted. Licences granted for public or common fisheries shall be available only for such fisheries. Licences granted for private fisheries shall not be available in public or common fisheries, except licences for the use of a rod and line:
- (3) Licences for fishing weirs, fishing mill dams, putts, putchers, fixed nets, and other fixed instruments or devices for catching salmon, *trout*, or *char*, shall be available only for the use of the persons to whom they are granted, and for the employment of such instruments and devices as are named and described therein:
- (4) Licences for moveable nets or other moveable instruments or devices for catching salmon, *trout*, or *char* shall be used only by the person to whom they are granted, or his agents or servants, and in respect of the instrument for which they are granted, and no person shall be deemed to be an agent or servant of a licensee for the purposes of this section unless his name is endorsed on the licence, either by the licensee or his authorized agent, or by the clerk or other persons authorized by the conservators, and the conservators shall make arrangements for facilitating the endorsement of the names of agents or servants of licensees by their clerk or other persons authorized as aforesaid. A fee of sixpence shall be

(u) 36 & 37 Vict. c. 71, 3rd schedule.

payable to such clerk or other person authorized as aforesaid in respect of the endorsement of the name of any agent or servant on a licence, in pursuance of this section, by any person requiring the same, if made by the clerk or other person authorized by the conservators, or by the licensee in case of the endorsement being made by him or his authorized agent. A licensee shall not be entitled to have endorsed on his licence the names of agents or servants exceeding twice the number of persons required to work at one time the net, instrument, or device in respect of which the licence is granted. Any licensee may from time to time remove or cause to be removed the name of any agent or servant from his licence, and, if he so desire, may substitute or cause to be substituted the name of another agent or servant, on payment of a like fee for the name of each person so substituted; but no endorsement made by the licensee or his authorized agent shall be valid unless a copy thereof shall, within twenty-four hours from the date thereof, which date shall be inserted on the licence at the time of making such endorsement as aforesaid, be sent by post to such clerk or other person authorized as aforesaid, accompanied with such fee or fees as are payable under this section in respect of such endorsement, and no person shall be deemed to be an authorized agent of the licensee for the purposes of this sub-section unless his name and address and notice of his appointment as an authorized agent shall have been sent by post to the clerk or other person authorized by the conservators previously to any endorsement being made by such authorized agent: Provided always, that if a licensee at any time during a fishing season, either works or assists in working a moveable net or other moveable instrument or device himself, the number of names which he shall be entitled to have indorsed on the licence for such moveable net or other moveable instrument or device shall be one less than twice the number of persons required at one time to work such moveable net, instrument, or device. Any licensee or authorized agent of a licensee who fraudulently endorses on the licence more names than he is entitled to have endorsed thereon, or who endorses thereon any date other than the actual date of the making of such endorsement, shall be liable on conviction thereof to a penalty not exceeding twenty pounds [for the first offence; not less than fifty shillings and not exceeding twenty pounds for the

second offence; not less than five pounds and not exceeding twenty pounds for the third offence; and of twenty pounds for each subsequent offence.]

- (5) A licence for the use of a rod and line shall be used only by the person to whom it is granted, and shall in no case be transferable (x).

Penalty on taking Salmon without a Licence.—22. In all fishery districts in which licences are payable under the provisions of the Salmon Fishery Act, 1865, or this act, any person fishing for, taking, killing, or attempting to take or kill, salmon, trout, or char, by any means whatsoever other than a properly licensed fishing weir, fishing mill-dam, fixed engine, instrument, net, or device for catching or facilitating the catching of salmon, trout, or char, or assisting any such person in so doing, shall be liable [for a first offence] to a penalty not exceeding five pounds, and a further penalty of not exceeding one pound in respect of each salmon, trout, or char so caught; [for a second offence, to a penalty of not less than fifty shillings and not exceeding five pounds, and a further penalty of not exceeding one pound in respect of each salmon, trout, or char so caught, but it shall not be imperative to inflict a greater penalty than fifty shillings; for a third offence, to a penalty of five pounds, and a further penalty of not exceeding one pound in respect of each salmon, trout, or char so caught, but it shall not be imperative to inflict a greater penalty than five pounds; for each subsequent offence, to a penalty of five pounds, and a further penalty of one pound in respect of each salmon, trout, or char so caught (y):] provided that this section shall not prevent the use of a gaff or landing net as auxiliary to any holder of a rod licence angling with a rod and line, and that nothing herein contained shall affect the provisions of the thirty-fifth and thirty-sixth sections of the Salmon Fishery Act, 1865 (z).

It will be noted that this section makes it illegal for any one, even the owner of the fishery, to take trout without a licence. A person taking trout in his own water could be punished under it.

Scale of Licences.—24. In every fishery district the maximum duty payable in respect of any licence for the use of any rod and line, fishing weir, fishing mill dam, putt, putcher, net, and other instrument or device for taking salmon, trout, or char, shall not exceed the sums above mentioned (a).

(x) 36 & 37 Vict. c. 71, s. 21.

(z) 36 & 37 Vict. c. 71, s. 22.

(y) 28 & 29 Vict. c. 121, s. 57;

(a) *Ib.* s. 24.

36 & 37 Vict. c. 71, s. 18.

This must be read with the qualification contained in section 7 of the Freshwater Fisheries Act, that the maximum licence for trout is not to exceed one-third of the maximum for salmon.

Board may vary Licence Duties with the approval of the Secretary of State.—25. The board of conservators may, with the consent and approval of the Secretary of State, from time to time vary the licence duties leviable within their district, and vary the licence duties leviable on similar instruments in different parts of the district, specifying in the licences the portions of the rivers in which the said licensed instruments may be used, so, however, that the licence duties so varied shall not exceed the sum above-mentioned: provided, that in the event of any variation in the said scale of licence duties being agreed upon, the board shall cause notice thereof to be given by advertisement in one or more local newspapers not less than once in each week for four consecutive weeks before the commencement of the next fishing season; and if from any mistake or error or any other cause such variation shall not have been duly made and published, the scale of licences in force during the preceding year shall be deemed to be in force for all purposes whatsoever, and shall so continue until it shall be duly altered or varied under the provisions of this act (b).

A question will arise under this section as to whether fixing the scale of licences for trout and char, under the Freshwater Fisheries Act, is a variation of the scale of licences within the meaning of the section; if it is a variation and not an addition, in those fishery districts in which the fishing season begins on the 2nd February, it will be almost impossible to comply with this clause and get the licences for trout in operation during the year 1879.

Powers of Water Bailiffs.—8. The provisions of the thirty-first section of the Salmon Fishery Act, 1865, and of the thirty-sixth, thirty-seventh, and thirty-eighth sections of the Salmon Fishery Act, 1873, relative to the powers of water bailiffs, shall extend and apply to all waters within the limits of this act, as if the words “salmon river,” wherever they occur in such sections, included all waters frequented by salmon, trout, or char.

These sections are given below. This section extends the power of the water bailiffs to all water within the limits of the act, that is practically to England and Wales; but the Salmon Fishery Acts only give a water bailiff power to act within the limits of his district. Outside, he has no more power than any private individual; and it

(b) 36 & 37 Vict. c. 71, s. 25.

will be an important question, if this section extends the power of water bailiffs outside their districts, Could a water bailiff search an offender he finds fishing in a river not within his district? The safe construction is that the section gives the water bailiff the same power with regard to trout and char that he had before as to salmon within his district, but it is by no means clear that a larger power is not given. It should be added that it is difficult to say what are the inland boundaries of a fishery district, as they have here been defined by the Secretary of State. Practically, they would, it is presumed, be taken to be coterminous with those of the watershed.

Order for Entry of Water Bailiff on Land.—31. Where it appears to any justice of the peace, on the application of any conservator or water bailiff made on oath, that such conservator or bailiff has good reason to suspect that acts in contravention of the Salmon Fishery Acts, 1861 to 1876, are being or are likely to be done on any land situate on or near to *waters frequented by salmon, trout, or char*, the justice may, by order under his hand, authorize such conservator or bailiff, during a limited period, to be specified in such order, not exceeding twenty-four hours, to enter upon and remain on such land during any hours of the day or night for the purpose of detecting the persons guilty of the aforesaid acts; and no conservator or water bailiff entering or remaining on any land in pursuance of such order shall be deemed to be a trespasser; but this section shall not affect any other powers of search conferred by the Salmon Fishery Acts, 1861 and 1865 (c).

It will be observed that a conservator, as well as a water bailiff, may obtain an order under this section. The words introduced by the Freshwater Fisheries Act have greatly enlarged the operation of the powers given by this section. Any brook or pool that contains trout may now be included in the order. It is difficult to say what is the meaning of the word "frequented;" whether the fact of a casual trout being found is sufficient, or it must be what is known as a trout stream. The powers are only applicable to offences against the Salmon Fishery Acts, and would not, it appears, apply to any other offence, such as the use of dynamite, under this act.

The water bailiff clauses in the Act of 1875 are as follows:—

Powers of Water Bailiff.—36. Any water bailiff appointed under the Salmon Fishery Acts, 1861 to 1873, acting within the limits of his district, may do all or any of the following things; (that is to say,)

- (1) Examine any weir, dam, fishing weir, fishing mill dam, fixed engine, or obstruction, or any artificial watercourse connected with *waters frequented by salmon, trout, or char*; and any person refusing to any water bailiff access to any such weir, dam, fishing weir, fishing mill dam, fixed engine,

obstruction, or watercourse, shall be liable [for a first offence] to a penalty not exceeding five pounds; [for a second offence to a penalty not less than fifty shillings and not exceeding five pounds; for a third offence to a penalty of five pounds:]

- (2) Stop and search on *all waters frequented by any salmon, trout, or char* any boat, barge, coracle, or other vessel used in fishing, or which there is reasonable cause to suspect contains any salmon, and seize any fish, instrument of fishing, or other articles forfeited in pursuance of the Salmon Fishery Acts, 1861 to 1873; and any person refusing to allow any such boat, barge, coracle, or other vessel to be stopped and searched, or resisting or obstructing any water bailiff in any such search, shall [for a first offence] be liable to a penalty not exceeding five pounds; [for a second offence, of not less than fifty shillings and not exceeding five pounds; for a third offence, to a penalty of five pounds:]
- (3) Search and examine all nets, baskets, bags, or other instruments used in fishing or in carrying fish by persons whom there is reasonable cause to suspect of having possession of fish illegally caught; seize all fish and other articles forfeited in pursuance of the Salmon Fishery Acts, 1861 to 1873; and any person refusing to allow any nets, baskets, bags, or other instruments used in fishing or in carrying fish to be searched or examined, or resisting or obstructing any water bailiff in any such search or examination, shall [for a first offence] be liable to a penalty not exceeding five pounds; [for a second offence, to a penalty of not less than fifty shillings and not exceeding five pounds; for a third offence, to a penalty of five pounds:]
- (4) For the enforcement of the provisions of the Salmon Fishery Acts, 1861 to 1873, every water bailiff shall be deemed to be a constable, and to have all the same powers and privileges, and be subject to the same liabilities as a constable duly appointed now has or is subject to in his constableness, by virtue of the common law of the realm or of any statute:
- (5) The production by a water bailiff of the instrument of his appointment, executed in the manner prescribed in the Salmon Fishery Act, 1865, shall be a sufficient warrant for any water bailiff exercising the authorities given to him under the Salmon Fishery Acts, 1861 to 1873 (*d*).

It will be observed that in the second subsection the power relates to salmon only; and it is extremely doubtful, if a water bailiff suspected a boat contained trout or char, if he would have power to search it; so that this section, by a slip of the draftsman in not including trout and char in the word salmon, will be practically inoperative.

A list of the fish and other articles forfeited under the Salmon Fishery Acts, 1861 to 1873, will be found in Bund's Law of Salmon Fisheries, pp. 104, 106.

Water Bailiff may enter on Land.—37. Any water bailiff may under a special order in writing from the board of conservators, signed by the chairman for the time being of such board, for this purpose at all reasonable times enter, remain upon, and traverse any lands, not being a dwelling-house or the curtilage thereof, adjoining or near to *all waters frequented by salmon, trout, or char* within the fishery district of such board, for the purpose of preventing any breach of the provisions of the Salmon Fishery Acts, 1861 to 1873; and no water bailiff entering, remaining upon, or traversing any land in pursuance of such order shall be deemed a trespasser. Provided always, that this section shall not apply to decoys or lands used exclusively for the preservation of wild fowl, and that no such order shall remain in force for more than two months from the date thereof. But nothing herein contained shall affect any other powers of search conferred by the Salmon Fishery Acts, 1861 to 1873 (e).

Persons Fishing illegally at Night may be Apprehended.—38. If any person, between the expiration of the first hour after sunset on any day and the beginning of the last hour before sunrise of the following morning, illegally takes or kills salmon, trout, or char, or is found on or near *any waters frequented by salmon, trout, or char*, with intent illegally to take or kill salmon, trout, or char, or having in his possession for the capture of salmon, trout, or char any instrument prohibited by the Salmon Fishery Acts, 1861 to 1873, it shall be lawful for any water bailiff, together with any assistants, to seize and apprehend any such offender without warrant, and to deliver him, as soon as may be, into the custody of a peace officer, in order to his being conveyed before two justices of the peace for the purpose of being convicted in the penalty assigned for his offence (f).

It will be noted that there is no penalty imposed under this section, and that if offenders are arrested they cannot, unless they have committed some offence against the Salmon Fishery Acts, be punished under the section. The section gives power to arrest and nothing more.

(e) 36 & 37 Vict. c. 71, s. 37.

(f) Ibid. s. 38.

Justice may grant Warrant to enter suspected Places.—

9. The provisions of the thirty-fourth section of the Salmon Fishery Act, 1861, which empower any justice of the peace upon information on oath to authorize the search of any premises, shall extend to all offences committed or alleged to have been committed under this act, and that section shall be construed and have effect as if the word "salmon" included trout, char, and all freshwater fish.

Justice may grant a Warrant to enter suspected Places.—34. It shall be lawful for any justice of the peace, upon an information on oath that there is probable cause to suspect any breach of the provisions of the *Salmon Fishery Acts, 1861 to 1876, or of the Freshwater Fisheries Act, 1878*, to have been committed on any premises, or any salmon, trout, char, or freshwater fish illegally taken, or any illegal nets or other engines, to be concealed on any premises, by warrant under his hand and seal to authorize and empower any inspector, water bailiff, conservator, constable, or police officer to enter such premises for the purposes of detecting such offence, or such concealed fish, at such time or times, in the day or night, as in such warrant may be mentioned, and to seize all illegal engines, or any salmon, trout, char, and freshwater fish illegally taken, that may be found on such premises; provided that no such warrant shall continue in force for more than one week from the date thereof (g).

This power, it will be seen, can be given to conservator, constable, or police officer, as well as water bailiffs. It applies throughout England and Wales, except the Tweed district, including Norfolk and Suffolk; it is not limited to fish nets and engines, but would extend to dynamite and explosive substances, and would include all freshwater fish, not merely those included in the 11th section of the act.

Power to extend Close Season to Char.—10. The provisions of the Salmon Fishery Act, 1876, which empower a board of conservators to alter the period during which it shall be illegal to take or kill trout in any fishery district, shall extend to char, and the fourth section of that act shall be construed and have effect as if the

(g) 24 & 25 Vict. c. 109, s. 34.

words “or char” followed the word “trout” in that section.

The section is as follows:—

Board of Conservators may make Bye-laws as to Time for Killing Trout.—4. Subject to the provisions contained in sections thirty-nine, forty, forty-one, forty-two, forty-three, forty-four, and forty-five of the Salmon Fishery Act, 1873, for the making, confirming, publishing, and proving of bye-laws, a board of conservators may, at any time after the commencement of this act, make a bye-law, and alter the same from time to time for the following purpose; (that is to say,)

To alter the period during which it shall be illegal to take or kill trout or char within any fishery district, or in any portion of a fishery district, so that the period within which trout or char may not be taken or killed shall not commence earlier than the second day of September nor later than the second day of November in each year, and shall not be less than one hundred and twenty-three days;

and the said board may by any such bye-law impose a penalty not exceeding five pounds for each offence against such bye-law, and such penalties shall be recovered and applied in manner provided in and by the Salmon Fishery Act, 1873.

Under this act bye-laws have been made, up to Midsummer, 1878, in five fishery districts—the Dee, Dart, Cleddy, Taff and Ely, and Teign, altering the dates for the capture of trout, and in those districts the times are as follows:—

Dee, from the 2nd October to the 2nd February for all modes of fishing except rod and line, and for rod and line from the 14th October to the 14th February, both inclusive.

Dart, for all kinds of fishing, from the 2nd October to the 28th February, both inclusive.

The Cleddy, from the 29th September to the 1st March, both inclusive.

The Taff and Ely, from the 20th September to the 1st February, both inclusive.

The Teign, from the 1st October to the 2nd March, both inclusive.

No power is here given to revoke a bye-law once made. As has already been stated, there is no power to allow the sale of trout; so this anomaly will happen that, while it may be legal to catch trout it is illegal to sell them, while it is legal to sell them it is illegal to catch them; for, as has already been stated, it is illegal on the Dee to catch trout with rod and line before the 15th of February, but they may be netted on the 3rd of February. If the close time remains as fixed by the act of 1873, all the fish sold are forfeited, and a

maximum penalty of 1*l.* can be imposed in respect of each fish ; but if the close time is varied by the bye-law there is no forfeiture, and the maximum penalty that can be imposed for any offence is 5*l.* irrespective of the number of fish taken.

This section concludes the part of the act that amends the Salmon Fishery Acts. From what has been stated, it will be seen that, although the intention of the amendments may have been to improve the law, the result has been, in many instances, only to introduce greater confusion.

Close Season for Freshwater Fish.—11. (1) In this section the term “freshwater fish” includes all kinds of fish (other than pollan, trout, and char) which live in fresh water, except those kinds which migrate to or from the open sea :

(2) The period between the fifteenth day of March and the fifteenth day of June, both inclusive, shall be a close season for freshwater fish :

(3) If any person during this close season fishes for, catches, or attempts to catch or kill any freshwater fish in any river, lake, tributary, stream, or other water connected or communicating with such river, he shall, on summary conviction before two justices, be liable to a fine not exceeding forty shillings :

Nothing in this sub-section shall apply—

- (a) To the owner of any several or private fishery where trout, char, or grayling are specially preserved, destroying within such fishery any freshwater fish other than grayling ;
- (b) To any person angling in any several fishery with the leave of the owner of such fishery or in any public fishery under the jurisdiction of a board of conservators with the leave of said board ;
- (c) To any person taking freshwater fish for scientific purposes ;

(d) To any person taking freshwater fish for use as bait :

(4) If any person during this close season buys, sells, or exposes for sale, or has in his possession for sale, any freshwater fish, he shall, on summary conviction before two justices, be liable to a fine not exceeding forty shillings :

(5) On a second or any subsequent conviction under this section the person convicted shall be liable to a fine not exceeding five pounds :

(6) After every conviction under this section the person or persons convicted shall forfeit all fish so caught, bought, sold, exposed for sale, or in possession for sale, and shall be liable, at the discretion of the convicting justices, to the forfeiture of all instruments used in the taking of such fish :

(7) A board of conservators appointed under the Salmon Fishery Acts, 1861 to 1876, or under this Act, may, as regards any or all kinds of freshwater fish, with the approval of the Secretary of State, exempt the whole or any part of their district from the operation of the first, second, and third sub-sections of this section. The exemption shall be advertised in such manner as the Secretary of State shall direct :

(8) The provisions of the Salmon Fishery Acts, 1861 to 1876, as to legal proceedings, offences, and penalties under those acts, shall apply to legal proceedings, offences, and penalties under this section.

Trout and char are already provided for by the Salmon Acts, but it seems there is no general close time either for pollan or for any migratory freshwater fish, except salmon and eels.

The definition of freshwater fish will give rise to very great difficulty if a person is charged with fishing during the close time for freshwater fish ; the defendant will try to prove that he was fishing for fish that migrate to the open sea, and a question will then have to be

settled, what fish do and do not migrate, and how far they go; thus, roach certainly go some way down to the estuary, do they go further? Again, what is the open sea, and what fish go there? Eels migrate to the estuary, do they go to the open sea?—this is a question upon which naturalists differ widely. A more unsatisfactory definition it is impossible to imagine, or one more likely to cause dispute.

It will be seen that this act does not apply to ponds that have no outlet communicating with a river, and it is more than doubtful if it applies to streams that are tributaries of a lake, as they are not tributaries of a river but of the lake. Again, what is a river?—does it include the estuary; if so, how far down are fish that are found in the estuary, such as soles, flounders and congers, freshwater fish? Is it a river properly so termed, or a brook? and is water connected with the river water naturally or artificially connected? All these points, and a great many more, might be put, and it is impossible to give any satisfactory answer. It must be borne in mind that the statute is a penal one, and according to the ordinary rule penal acts must be strictly construed; and therefore probably the act when it comes to be judicially interpreted will have a far more limited application than its framers contemplated.

It does not apply to a several or private fishery where trout or grayling are specially preserved. It is difficult to see what is meant by the word specially. A landowner preserves his fishery, and keeps down pike and coarse fish, does he specially preserve trout and grayling? What constitutes special preservation? The prosecutor in any case will have to prove that trout and grayling are not specially preserved. If a landowner calls his keeper, who swears that he is instructed to look after the trout and grayling, will this be a good defence? Again, if a stream belongs to two riparian owners, the one preserves his trout the other does not, the one who preserves his trout, or says he does, can net and fish during the close season; the one who does not cannot. Probably the effect of this exception will be that all landowners will say they specially preserve trout and grayling, and fishing will go on as before.

This clause places grayling in an exceptional position; it absolutely prohibits the destruction of grayling, except by angling in private fisheries, during the close season. During their close season trout or char may not be killed in any way, but grayling may be killed during their close time by angling in private fisheries, even where they are specially preserved. As no one fishes for grayling with nets, it comes to this, that as to them the law is the same as before, and a measure passed for the encouragement of anglers does not make any provision for the fish anglers most value! This exception permitting fishing only applies to the owner, not the occupier; so a tenant of a trout fishery, with a twenty years' lease, cannot keep down the coarse fish.

The second exception is in favour of angling in a several fishery. The word private is here left out, so that if a river divide two parishes, on one bank the landowner has a several fishery, on the other there is a common of fishery; the owner of one side can fish, the owners of the other cannot.

A person may fish in a public fishery if a board of conservators give him leave. This is really throwing on boards of conservators a new and onerous duty, namely, of deciding questions of title; how

can they say what are public, and what private fisheries. A great deal, far the larger part, of the water in which the public now fish is really private,—e.g. all canals. Clearly a board of conservators cannot take upon themselves to decide what is public and what is private, as they have not the means or the ability to decide complicated points of law. It may be said they do so now as to licences, but this is not so; what they do is, they ask the licensee what he wants, a licence to fish in public or in private water, and he says what he requires and decides the question for himself.

There is no definition as to what scientific purposes are; nor, as in the Salmon Act, is any previous consent of a board of conservators, or any one else required. If a person is found fishing, and alleges, and can induce the court before whom he is tried to believe, that he is taking fish for scientific purposes, he can take what he likes. It will be noted this is a question not of law but of fact; and there is no questioning the decision of the justices but by appealing to quarter sessions.

There are no restrictions as to what is meant by bait. A large pike will take a roach of a pound, and it will afford a great door to fraud if a person allege that he is taking fish for bait when he is angling against the provisions of the act.

It will be noted that the act makes no provision either as to size of mesh, description of net, or size of fish. Fish may be taken in any way, and of any size.

If fish are offered for sale, even if legally caught, the vendor and purchaser are liable to a penalty. In the Salmon Acts this is not so, but the onus of proving the fish legally caught rests on the vendor.

As this act is to be read as one with the Salmon Acts, the minimum penalties clause will apply, and on a second conviction the person convicted will forfeit not less than two pounds ten shillings.

It will be observed that the fish are absolutely forfeited. As to this the justices have no discretion; but as to instruments they have, and can say if they shall or shall not be forfeited.

The act is silent as to how the district is to be exempted; what steps the board are to take for the purpose. It is presumed an order passed by the board and confirmed by the Secretary of State will be the course. As to the advertisements, the act does not say who is to advertise, the Secretary of State or the board. There is nothing to throw the cost on the board, and it would seem it should be paid by the Secretary of State. It will be noted that the board can exempt any or all kinds of fish.

The subject of procedure and penalties will be found treated of in the next chapter.

Extension of 40 & 41 Vict. c. 65, to Private Waters.]—

12. The Fisheries (Dynamite) Act, 1877, which prohibits the use of dynamite or other explosive substance for the catching or destruction of fish in a public fishery, shall apply to the use of any such substance for the

catching or destruction of fish in any water, whether public or private, within the limits of this act.

The act is as follows:—

Short Title.—1. This act may be cited as the Fisheries (Dynamite) Act, 1877.

Prohibition of the use of Dynamite in Public Fisheries.—2. Any person who uses dynamite or other explosive substance to catch or destroy fish in any waters, public or private, in England and Wales, or in a public fishery in Scotland or Ireland, shall be liable on summary conviction either to a fine not exceeding twenty pounds, or, in the discretion of the court, to be imprisoned, with or without hard labour, for a term not exceeding two months.

Offences committed on Sea Coast, where to be tried.—3. Any offence committed under this act, on the sea coast, or at sea within one marine league of the coast, shall be deemed to be committed in a public fishery, and if beyond the ordinary jurisdiction of any court of summary jurisdiction, shall be deemed either to have been committed on the land abutting on such sea coast or adjoining such sea, or to have been committed in any place where the offender is found, and may be tried and punished accordingly.

Definition of "Summary Conviction." 27 & 28 Vict. c. 53; 14 & 15 Vict. c. 93.—4. "Summary conviction" in this act means, as to England, "a conviction before two justices in petty sessions;" as to Scotland, a conviction under the Summary Procedure (Scotland) Act, 1864; as to Ireland, a conviction under the Petty Sessions (Ireland) Act, 1851, or any acts in force for the like purpose in the police district of Dublin metropolis, or any acts amending such acts.

The act applies to all rivers and streams in England and Wales; and the owner of the fishery or anyone else is equally liable to its penalties. The penalties will be recovered under Jervis' Act in the ordinary way. It is not quite clear what was the object of the amendment. As the law stood a person using dynamite in a private fishery was guilty of an indictable misdemeanor under the 24 & 25 Vict. c. 97, s. 32, and could be punished with penal servitude. The Dynamite Act was passed to make it an offence to fish in a public fishery, to which the other did not apply. The result of the amendment is to make it optional with the justice to fine instead of committing for trial, and to make the use of dynamite absolutely illegal by the owner or any one else.

Repeal of part of 18 Geo. 3, c. 33, as to fishing in the Severn and Verniew in June and July.—13. So much of the act of parliament made and passed in the

eighteenth year of the reign of King George the Third, chapter thirty-three, intituled "An Act for the better preservation of fish and regulating the fisheries in the River Severn and Verniew," as prohibits any person or persons in the months of June or July laying, drawing, making use of, or fishing within the said rivers or either of them with any net the meshes whereof shall be under two inches and a half square by the standard, and not extended, or ten inches round, allowing to each mesh four knots, is hereby repealed.

CHAPTER VII.

PROCEEDINGS FOR PENALTIES UNDER THE FISHERY ACTS.

THE recovery of penalties under the Fishery Acts is, as a rule, governed by the various provisions in the general act of 11 & 12 Vict. c. 43, regulating summary proceedings before justices of the peace.

Outline of Procedure.—It will be convenient to give a succinct statement of the procedure in the order in which the stages occur in practice, with references to the authorities (a).

Information of Charge, and Time.—It is the practice, though not absolutely necessary in this case by the statutes, to take the information in writing, and it must be laid within six calendar months after the commission of the offence (b) before a justice of the jurisdiction where the offence was committed. It may be laid by any person (c); but the charge, if a summons is to be issued, is usually deposed to by a credible witness, who may, and often is, now he is competent by 14 & 15 Vict. c. 99, to give evidence, be the informer himself (d); but if a warrant is issued in the first instance the information must be deposed to on oath (e). Only

(a) Fuller information must be sought for in the larger work, Oke's "Magisterial Synopsis," 12th ed., pp. 111—228.

(b) 36 & 37 Vict. c. 71, s. 62.

(c) *Middleton v. Gale*, 8 A. & E. 135; *Morden v. Porter*, 24 L. J.

(N. S.), M. C. 213; 1 L. T. (N. S.) 203.

(d) See Oke's "Synopsis," 12th ed. p. 368, note 156; *R. v. Scotton*, 13 L. J. (N. S.) M. C. 58; see general form of information, post.

(e) 11 & 12 Vict. c. 43, s. 10.

one offence and one count—i.e. an illegal act done on one day only—can now be inserted in an information (*f*), although several offenders joining in the commission of the same offence at the same time may be included (*g*), as well as those who are charged under 11 & 12 Vict. c. 43, s. 5, with aiding, abetting, counselling, or procuring the commission of it (*h*), although the offence of the latter is in another jurisdiction. Minors and married women, and indeed all females, can be convicted of any offence punishable summarily. At the end of this Chapter are given forms of statements of the offences against the fishery law. With respect to the date of committing an offence, it may be stated, if not known correctly, to have been between such a day and such a day, for proof of one of the days within the prescribed period for laying the information will suffice (*i*), and so as to the parish in which it was committed, if it was in fact committed within the justices' jurisdiction (*k*).

The Process to issue to Defendants.—A summons is to be issued to the party charged, which may be served personally or at his abode (*l*), or a warrant may be issued to apprehend him if he is likely to abscond, or

(*f*) *Ibid.*; *R. v. Cridland*, 27 L. J. (N. S.) M. C. 28; 29 L. T. 210.

(*g*) *R. v. Littlechild*, L. R., 6 Q. B. 293; *R. v. Clee and Osborn*, 40 L. J. (N. S.) M. C. 137; 24 L. T., N. S. 233.

(*h*) *Stacey v. Whitehurst*, 34 L. J. (N. S.) M. C. 94; 11 L. T., N. S. 710.

(*i*) *Onley v. Gee*, 30 L. J. (N. S.) M. C. 222; 4 L. T., N. S. 338; 25 J. P. 342.

(*k*) 11 & 12 Vict. c. 43, s. 9; Oke's "Synopsis," 12th ed., p. 131.

(*l*) If defendant appears, all objections to the information not being on oath are waived. *R. v. Millard*, 22 L. J. (N. S.) M. C. 108; 1 Dears. C. C. 166. See as to objections as to defects in summons or information for form, 11 & 12 Vict. c. 43, s. 1.

if the justice thinks fit (*m*). For forms of summons and warrant see Forms Nos. 48, 49 (*n*).

Remanding or bailing Defendants till Hearing, &c.—The 11 & 12 Vict. c. 43 contains various provisions as to remanding or bailing defendants before or during the hearing of a case, on account of variances between the information and the evidence,—on his apprehension before the time of hearing, and complainant not in attendance,—and on adjournments (*o*).

Summonses to Witnesses.—Any justice may issue a summons to any person to appear to give evidence on the hearing of the information, and he is liable to a penalty of 5*l.* for non-attendance, or refusing to be examined (*p*).

Hearing of Information.—The justices hearing the information must be of the county, or other jurisdiction where the offence was committed, but need not be the same who received the information. The number necessary to convict is usually two, but a metropolitan police magistrate, the lord mayor or an alderman of London, and a stipendiary magistrate, may act alone (*q*). The hearing must be in open court, and either party may have counsel or attorney (*r*), and in default of defendant's appearance it may be *ex parte*, on proof of due service of summons (*s*). The informer is a competent witness for himself or the defendant, but not so the defendant in any case of summary conviction, it being a *criminal*

(*m*) 11 & 12 Vict. c. 43, s. 2.

(*n*) See post, p. 91.

(*o*) 11 & 12 Vict. c. 43, ss. 3, 9, 13, 16; see Oke's "Synopsis," 12th ed., p. 145.

(*p*) 11 & 12 Vict. c. 43, s. 7; Oke's "Synopsis," 12th ed., pp.

145—148; for forms, see Oke's "Formulist," 5th ed., pp. 15, 16.

(*q*) 11 & 12 Vict. c. 43, ss. 33, 34; 21 & 22 Vict. c. 73, s. 1.

(*r*) 11 & 12 Vict. c. 43, s. 12.

(*s*) Ibid. s. 13.

proceeding (u). Matters of defence or exception must be proved by the defendant. A claim of right, which mostly arises on charges of trespass made under 24 & 25 Vict. c. 96, s. 24, as a rule, ousts the justices' jurisdiction to determine an information, upon which see the cases given above (x). The testimony of the witnesses is entirely for the consideration and judgment of the justices, who are placed in the situation of a jury; and it is laid down that, in point of law, the evidence will support a conviction by a magistrate, if there was such evidence as would have been sufficient to have been left to a jury (y). In all cases but that of trespass, and perhaps trespass (z), there must be evidence of a guilty knowledge and intention in the person charged with the offence (a). On dismissal of an information costs may be ordered to be paid by the complainant to the defendant (b).

Penalties.—The defendant cannot be convicted of any other offence than the precise one for which he is summoned to answer (c). Each defendant, where there

(u) 14 & 15 Vict. c. 99, s. 3; *Cattell v. Ireson*, 27 L. J. (N. S.) M. C. 167; 31 L. T. 80; 22 J. P. 672; *Parker v. Green*, 31 L. J. (N. S.) M. C. 133; 2 B. & S. 299; 9 Cox, C. C. 169; *R. v. Hunt-hurst*, 26 J. P. 772; 7 L. T., N. S. 268; Oke's "Synopsis," 12th ed., pp. 71, 72.

(x) See ante, p. 4.

(y) Per *Williams J.*, in *Brown v. Turner*, 32 L. J. (N. S.) M. C. 106; 27 J. P. 103; *S. C.* sub nom. *R. v. Turner*, 7 L. T., N. S. 683; *Cornwell v. Saunders*, 32 L. J. (N. S.) M. C. 6; 7 L. T., N. S. 356; Oke's "Synopsis," 12th ed., p. 165.

(z) See *Watkins v. Major*, L. R., 10 C. P. 662.

(a) Oke's "Synopsis," 12th ed., p. 164, note 164, and p. 129, note 53; see also *Hearne v. Garton and Stone*, 28 L. J. (N. S.) M. C. 286; 31 L. T. 256.

(b) 11 & 12 Vict. c. 43, ss. 14, 18.

(c) *Martin v. Pridgeon*, 28 L. J. (N. S.) M. C. 179; 33 L. T. 119; 23 J. P. 630; *Soden v. Cray*, 7 L. T., N. S. 324; 26 J. P. 743; *R. v. Brickhall*, 33 L. J. (N. S.) M. C. 156; 10 L. T., N. S. 385; *Blake v. Beech*, L. R., 1 Ex. Div. 320.

are several joining in the offence, is liable to the full penalty, upon the well-known principle of the common law that all are principals in petty misdemeanors. Cumulative imprisonment may be ordered by separate commitments if a defendant is convicted at the same time of two or more offences under different convictions (*d*). Costs may be ordered in all cases against the defendant (*e*).

The Conviction.—The form I 2 in the 11 & 12 Vict. c. 43 (*f*), is the correct form to be used. It should include all the defendants convicted at the same time of the same offence.

Appeal.—The provisions of 12 & 13 Vict. c. 45, s. 3, apply to an appeal to quarter sessions (*g*). The defendant has also another mode of appeal under 20 & 21 Vict. c. 43, i.e., to one of the superior courts, if the justices' determination rests on a question of law; and the complainant has this latter resort, too, if he is dissatisfied with the justices' decision in dismissing his information; but if the defendant appeals under 20 & 21 Vict. c. 43, he is, by sect. 14, to be taken as having abandoned his appeal to the quarter sessions (*h*).

How Penalties under Freshwater Fisheries Act to be recovered.—The proceedings under the Salmon Fishery Acts as to legal proceedings, offences, and penalties are to apply to all legal proceedings, offences, and penalties under the 11th section of the Freshwater Fisheries Act,

(*d*) 11 & 12 Vict. c. 43, s. 25.

(*e*) *Ibid.*, s. 18.

(*f*) See the form, post, p. 91; *R. v. Hyde*, 21 L. J. (N. S.) M. C. 94; 16 J. P. 97; overruling *Ex parte Hyde*, 15 Jur. 803; *Re Alison*, 24 L. J. (N. S.) M. C. 73; 24

L. T. 117; *Egginton v. Mayor of Lichfield*, 24 L. J. (N. S.) Q. B. 360.

(*g*) Oke's "Synopsis," 12th ed., p. 210.

(*h*) *Ibid.*, pp. 218, 222.

1878. As that is the only section which imposes any penalty, it practically makes the penalties under the Freshwater Fisheries Act recoverable in the same way as those under the Salmon Acts.

Recovery of Penalties.—By the 62nd section of the Salmon Fishery Act, 1873 (i), “All penalties imposed by ‘The Salmon Fishery Acts, 1861 to 1873,’ or by any byelaw made in pursuance of that act, and all sums of money, costs, and expenses by the said acts or either of them directed to be recovered in a summary manner, may be recovered within six months after the commission of the offence before two justices, in manner directed by an act passed in the eleventh and twelfth years of the reign of her present Majesty Queen Victoria, chapter forty-three, intituled ‘An Act to facilitate the performance of the duties of justices of the peace out of sessions within England and Wales, with respect to summary conviction and orders,’ or of any act amending the same. And all moneys received and penalties recovered under the said acts or any of them on the complaint of a board of conservators, or of any officer of or a person authorized by a board of conservators, shall be paid to the board of conservators for the district, to be applied by them for the purposes of ‘The Salmon Fishery Acts, 1861 to 1873’ (unless the court for some special reason otherwise order).”

Under this section it seems doubtful whether not only must the information be laid within the time limited, but also if the conviction must not take place within the six months (k), as the 11th section of the 11 & 12

(i) 36 & 37 Vict. c. 71.

(k) See *Reg. v. Mainwaring*, 27 L. J. (N. S.) M. C. 278; 31 L. T.

178, a case under the repealed act 18 & 19 Vict. c. 108, s. 14. See the observations of Lord

Vict. c. 43 only applies where no time is specially limited. It would seem that in an ordinary case, where the act does not, as here, prescribe that the penalty must be *recovered* within six months, laying the information within the time is sufficient. The month means a calendar month. This section practically incorporates the 62nd section of the Salmon Fishery Act, 1865 (*l*). That section is, however, still unrepealed, and is as follows:—

Payment of Penalties to Conservators in certain Cases.] —“Where any penalty is recovered on the complaint of a board of conservators, or of any officer of or person authorized by a board of conservators, the court shall, unless for special reason they think it inexpedient so to do, direct the whole of the penalty and the proceeds of any forfeiture to be paid to the said board, to be applied by them for the purposes of the Salmon Fishery Acts, 1861, 1865.”

The “special reason” would seem to be some particular reason applicable to each case, not some general reason, as, the board were not doing their duty.

Informer usually gives Evidence.]—The 14 & 15 Vict. c. 99, s. 2, having made the informer competent to give evidence, it is the practice for him to depose on oath to the offence, if no other person is ready to do so on the commencement of the proceedings. The 11 & 12 Vict. c. 43, s. 2, authorizes a justice to issue a warrant instead of a summons if he think fit, as it provides that “a justice may issue such warrant in the first instance without it being deposed to that the party is *likely to*

Campbell, C.J., and Crompton, J., JJ., contra.
and those of Coleridge and Erle, (*l*) 28 & 29 Vict. c. 121.

abscond.” Forms of information, summons, and warrant are given in Forms Nos. 47, 48, 49 (*m*).

11 & 12 Vict. c. 43, s. 7, gives a power to summon witnesses to *either* party, and provides for the service of the summons, and tender of the witness’s expenses (*n*).

For form of conviction see Form No. 50 (*o*). The 11 & 12 Vict. c. 43, s. 14, contains a general enactment, that the prosecutor is not bound to prove a negative (*p*). The necessity for negating exceptions in an information is treated of in Oke’s “Synopsis” (*q*).

By the 11 & 12 Vict. c. 43, s. 14, all convictions are to be returned to sessions. A mandamus lies against justices to compel them to return convictions, but not against their clerk, the duty of returning them being on them (*r*). And as to convictions under the Salmon Fishery Acts, a minute is to be sent to the clerk of the board of conservators as well.

Enforcing Conviction.—By 11 & 12 Vict. c. 43, s. 29, *any* one justice of the same jurisdiction as the convicting justice or justices may enforce a conviction by commitment; which may now, by sect. 23, include the costs of conveying the offender to prison (*s*). The offender can be liberated on payment of the amount to the gaoler if he be in prison, or to the constable if he be not lodged there, and the constable or gaoler must pay the same to the clerk to the justices (*t*); but the

(*m*) See post, pp. 90, 91.

(*n*) See Oke’s “Synopsis,” 12th ed., pp. 145—148.

(*o*) Post, No. 50, p. 91.

(*p*) See Oke’s “Synopsis,” 12th ed., p. 160.

(*q*) 12th ed., p. 134.

(*r*) *Ex parte Hayward*, 32 L. J. (N. S.) M. C. 89; 27 J. P. 102; *S. C.*, *Ex parte Clerk of Peace for Rochester*, 7 L. T., N. S. 622.

(*s*) See Oke’s “Synopsis,” 12th ed., pp. 203, 204.

(*t*) 11 & 12 Vict. c. 43, ss. 28, 31.

crown may remit any penalty under this act and extend the royal mercy to persons imprisoned for non-payment of them (*u*). For form of commitment, see Form No. 51.

The Salmon Fishery Act, 1865 (*v*), contains a provision limiting the discretion of the justices as to the amount of penalty, by declaring that on a second conviction one-half the maximum penalty must be inflicted, and on a third conviction the whole. The section (the 57th) is as follows:—

Minimum Penalties.]—"The penalty in respect of any offence under the Salmon Fishery Acts, 1861 [to 1873], and any bye-law made under the authority of this act, shall on a conviction for a second offence be not less than one-half the greatest penalty capable of being imposed in respect of such offence; and on a conviction for a third or any subsequent offence the greatest amount of penalty mentioned in the said acts shall be imposed; but nothing herein contained shall affect the provisions of the Salmon Fishery Act, 1865, in respect of the discretion of imposing the punishment of hard labour as therein mentioned; *but it shall not be imperative on any justice under the provisions of this section to inflict a greater penalty than fifty shillings for a second offence, or than five pounds for a third offence under the Salmon Fishery Acts, 1861 to 1873*" (*x*).

The words as to bye-laws seem to be inoperative, as no bye-law can be made under the Act of 1865.

In addition to this, a licensee on a second conviction forfeits his licence (*y*).

(*u*) 22 Vict. c. 32; Oke's "Synopses," 12th ed., p. 191.
(*v*) 28 & 29 Vict. c. 121.

(*x*) 36 & 37 Vict. c. 71, s. 18.
(*y*) 28 & 29 Vict. c. 121, s. 56.

Minute of Conviction to be sent to Board of Conservators.—To facilitate the proof of convictions, the Salmon Fishery Act, 1873 (s), provides, by the 11th section, “Where any person is convicted of an offence under the Salmon Fishery Acts, 1861 to 1873, or under any bye-law made in pursuance of this act, the clerk of the justices before whom such person is convicted shall forward a certificate of such conviction to the clerk of the board of conservators for the fishery district within which such conviction took place within one calendar month from the date of such conviction, and such certificate shall be receivable in evidence in all legal proceedings, and any clerk to any justices neglecting or refusing to forward such certificate to the clerk of the board of conservators, shall for every such refusal or neglect be liable to a penalty of not exceeding two pounds [for the first offence, not less than one pound and not exceeding two pounds for the second offence, and of two pounds for the third and every subsequent offence].”

A good deal of discussion has arisen as to who is to pay for these certificates, the magistrate's clerk in most cases being authorized to charge a fee for a certificate to be paid by the applicant. And a further difficulty arises in those counties where the fees are paid by stamps. On the whole it would seem, that although the duty is imposed on the clerk of sending the certificate, he is not legally liable to pay the fees as well. But the point cannot be settled without some judicial determination.

Forfeiture of Licence.—It would seem that all these provisions apply to convictions under the Freshwater Fisheries Act; and that by incorporating the Salmon

(s) 36 & 37 Vict. c. 71.

Fishery Acts the minimum penalty for a second offence is forty shillings. It is somewhat doubtful, but it would appear not to be the case, that a licensee who is convicted for an offence against the Salmon Acts and an offence against the Freshwater Fisheries Act forfeits his licence, as the rule that penal acts are to be strictly construed would prevent it being said that an offence against the Freshwater Fisheries Act was an offence against the Salmon Acts. But having regard to the fact that the Freshwater Fisheries Act is to be read as one with the Salmon Acts, and the provisions as to the penalties applying, it is difficult to say if this is so.

By the Salmon Fishery Act, 1865, for a third offence for fishing with lights, with roe, taking unclean or unseasonable fish, or taking fish during the annual close time, an offender may be imprisoned instead of fined.

Power in certain Cases to award Imprisonment with Hard Labour instead of Penalty.—56. "Where any person has been convicted twice of an offence under any of the following sections of the Salmon Fishery Act, 1861, that is to say, sections eight, nine, fourteen, and seventeen, he may, on being convicted a third time of an offence against any of the said sections, instead of being fined in a pecuniary penalty, be sentenced to imprisonment with or without hard labour for any period not exceeding six months, or less than one month (a), and, if a licensee, he shall, on being convicted a second time of an offence against the Salmon Fishery Acts, 1861 to 1873, forfeit his licence."

It would seem that a second conviction for *any* offence against the Salmon Acts forfeits a licence; but for imprisonment the offender must have been convicted three

(a) 36 & 37 Vict. c. 71, s. 18.

times for offences against one of the four sections, not three times against the Salmon Fishery Acts. The court need not imprison, but can fine. If they imprison, it must be for at least one month.

Appeal to Quarter Sessions in case of Summary Conviction.—66. “If any person feels aggrieved by any determination or adjudication of the justices with respect to any penalty or forfeiture under the Salmon Fishery Acts, 1861 to 1876, or either of the said acts, the person so aggrieved may appeal to the court of general or quarter sessions for the county or place in which the cause of appeal has arisen, holden not less than fifteen days and not more than four months after the decision of the justices from which the appeal is made; provided that the appellant shall, within three days after the cause of appeal has arisen, give notice in writing to the other party to the proceedings of his intention to appeal, and of the grounds thereof; and also provided that the appellant shall, within three days after the cause of appeal has arisen, enter into a recognizance before a justice of the peace, with two sufficient sureties, conditioned personally to try such appeal and to abide the judgment of the court thereon, and to pay such costs as may be awarded by the court: the court may adjourn the appeal, and upon the hearing thereof may confirm, reverse, or modify the decision of the justices, with or without costs, to be paid by either party” (b).

It would seem that this section gives a right of appeal under the Freshwater Fisheries Act as well as under the Salmon Fishery Acts.

If the conditions of the recognizance are not fulfilled

(b) 28 & 29 Vict. c. 121, s. 66.

and the appeal prosecuted, the recognizance must be estreated by the quarter sessions, and the sheriff will thereupon levy the amount on the goods of the parties bound. The order for the costs of the appeal is enforced by the sessions under 12 & 13 Vict. c. 45, s. 5 (*b*). Appeals lie for matter of law or fact. If it is a matter of law, instead of appealing the defendant or complainant can apply to the justice for a case under the 20 & 21 Vict. c. 43, but by so doing the defendant abandons his right to appeal (*c*).

As to Disqualification of Justices.—In consequence of the decision of *Reg. v. Allen* (*d*), as to interested parties, the Salmon Fishery Act of 1865 provided, by the 61st section, that “No justice of the peace shall be disqualified from hearing any case arising under the Salmon Fishery Acts, 1861, 1865, or either of them, by reason of his being a conservator or a member of a board of conservators, or a subscriber to any society for the protection of salmon or trout; provided that no justice shall be entitled to hear any case in respect of an offence committed on his own land.”

This section, it is apprehended, will also apply to prosecutions under the Freshwater Fisheries Act.

In addition to these, there are several provisions of the Salmon Fishery Acts, giving special facilities as to Evidence in proving certain matters; these are—Certificate of formation of district, 36 & 37 Vict. c. 71, s. 8; evidence of proceedings at meetings of conservators, 36 & 37 Vict. c. 71, s. 35; Legality of scale of licence duties, 36 & 37 Vict. c. 71, s. 64; Time after which it

(*b*) As to appeal generally, see Oke's “Synopsis,” 12th ed., p. 209.

(*c*) Sect. 14; as to procedure, see Oke's “Synopsis,” 12th ed., p. 218.

(*d*) 4 B. & S. 915.

is illegal to fish without a licence, 28 & 29 Vict. c. 121, s. 34, sub-sect. 8.

The sections are as follow:—

Copy of Certificate of formation of District to be Evidence.—8. “A copy of the certificate or certificates of the Secretary of State deposited with the clerk of the peace of any county in relation to the formation, enlargement, combination, reduction, or alteration of a fishery district, granted in pursuance of the fifth section of ‘The Salmon Fishery Act, 1865,’ or of this act, certified or purporting to be certified as a true copy by the clerk of the peace of such county, shall be evidence that all the requisitions contained in ‘The Salmon Fishery Act, 1865,’ or in this act, relating to the formation, enlargement, combination, reduction, or alteration of any fishery district have been complied with, and that such district has been duly formed, enlarged, combined, reduced, or altered with the limits and in the manner specified in such certificate or certificates (e).”

Evidence of Proceedings at Meetings.—35. “Any minute made of proceedings at a meeting of a board of conservators, signed by the chairman of such meeting, or by the chairman of the next meeting of the board, shall be receivable in evidence in all legal proceedings without further proof; and until the contrary is proved every meeting of the board in respect of the proceedings of which minutes have been so made, shall be deemed to have been duly convened and held, and all the members thereof to have been duly qualified” (f).

Proof of Legality of Scale of Licences.—64. “The provisions of the ‘Documentary Evidence Act, 1868,’

(e) 36 & 37 Vict. c. 71, s. 8.

(f) *Ibid.* s. 35.

shall apply to a scale of licences approved by the Secretary of State, in pursuance of the said 'Salmon Fishery Act, 1865,' or this act, in the same manner as if such scale so approved as aforesaid were an order or regulation issued by such Secretary of State, and the production of a copy of such scale of licences, purporting to be certified to be a correct copy of such scale, by any person empowered to certify the same in pursuance of the 'Documentary Evidence Act,' shall be evidence that such scale has been approved of, and that all the steps required by 'The Salmon Fishery Act, 1865,' or this act, relating to the formation and approval of such scale, have been taken" (*f*).

Time after which it is illegal to Fish without a Licence.]
—(8). "The conservators of a district shall, on their first appointment, give notice, by advertisement in one or more newspaper or newspapers published or circulating in their district, of a time, not being less than three months after such appointment, at the expiration of which it will be illegal to fish for salmon in that district without a licence, and shall state in the notice a place or places within their district where licences may be procured; and the production of a copy of a newspaper containing any such advertisement as aforesaid shall be conclusive evidence, as respects a fishery district, of due notice having been given of the time after which it will be illegal in that district to fish for salmon without licences" (*g*).

The 36th section of the Salmon Fishery Act, 1861, contains provisions similar to that in the Larceny Act, 24 & 25 Vict. c. 96. As to the trial of offences com-

(*f*) 36 & 37 Vict. c. 71, s. 64.

(*g*) 28 & 29 Vict. c. 121, s. 34, subs. 8.

mitted on the boundaries of counties or parishes, or on the sea coast, the provisions are:—

Offences on Rivers may be tried in County on either Side.]—36. “Where any offence under this act is committed in or upon any waters forming the boundary between any two counties, districts of quarter sessions or petty sessions, such offence may be prosecuted before any justice or justices of the peace in either of such counties or districts.”

Offences committed on Sea Coast where to be tried.]—37. “Any offence committed under this act, on the sea coast or at sea, beyond the ordinary jurisdiction of any justice of the peace, shall be deemed to have been committed within the body of any county abutting on such sea coast or adjoining such sea, and may be tried and punished accordingly.”

These provisions will also apply to the Freshwater Fisheries Act.

By the Fisheries (Dynamite) Act, 1877 (*h*), it is provided that summary conviction shall mean a conviction before two justices in petty sessions. The procedure under the act will therefore be governed by the ordinary procedure at petty sessions under the 11 & 12 Vict. c. 43 (*i*). A person guilty of an offence under the act, in private water or in a salmon river, may be prosecuted under the 24 & 25 Vict. c. 97, s. 32 (*j*) for an indictable misdemeanor (*k*).

The proceedings under the Larceny Act, 24 & 25 Vict. c. 96, and the Malicious Injuries to Property Act,

(*h*) 40 & 41 Vict. c. 65.

(*i*) See Oke's "Synopsis," 12th ed. p. 113.

(*j*) See ante, p. 62.

(*k*) See the procedure as to these, Oke's "Synopsis," 12th ed., p. 839.

24 & 25 Vict. c. 97, as to summary convictions (*l*) and indictable misdemeanors (*m*), fall under the general law. It should be observed that in indictable misdemeanors the costs of the prosecution are usually allowed as in cases of felony.

The following are special forms for the various offences above mentioned, for filling up the general form given in Jervis's Act, 11 & 12 Vict. c. 43:—

No. 1.—*Mixing Poisonous Substances in Rivers* (24 & 25 Vict. c. 109, s. 5).

For that you [*or he the said A. B.*] on the — day of —, at the parish of — in the said *county*, unlawfully did cause [*or put, or unlawfully and knowingly did permit*] to flow, [*or to be put*] into certain waters there called —, containing salmon, [*or into the tributaries of certain waters, &c.*] certain liquid [*or solid*] matter called — to such an extent as to cause the said waters to poison and kill fish, contrary to section 5 of "The Salmon Fishery Act, 1861."

No. 2.—*Fishing with Lights, Spears, &c.* (24 & 25 Vict. c. 109, s. 8).

For that you [*or he the said A. B.*] on, &c., at, &c., unlawfully did use a certain light, to wit, —, for the purpose of [*or a certain spear, or gaff, or strokehall, or snatch, or instrument, or any other of the instruments named, for*] catching salmon, [*or trout, or char*] in certain waters there called —,

[*or had in your or his possession there a certain light, or —, under such circumstances as to satisfy us the said justices that he then intended to catch salmon by means thereof*], contrary, &c.

No. 3.—*Using Roe as a Bait* (24 & 25 Vict. c. 109, s. 9).

For that you [*or he the said A. B.*] on, &c., at, &c., unlawfully did use certain fish roe for the purpose of fishing there in certain waters called —,

[*or buy, or sell, or expose for sale, or have in your or his possession there, certain salmon, or trout, or char roe*], contrary, &c.

(*l*) See Oke's "Synopsis," 12th ed., p. 113. (m) *Ib.* p. 839.

No. 4.—*Using improper Nets* (24 & 25 Vict. c. 109, s. 10).

For that you [or he the said A. B.] on &c., at &c., within the — fishery district, unlawfully did take [or attempt to take] salmon in certain waters there called —, with a certain net having a mesh of less dimensions than [two] inches in extension from knot to knot (measured on each side of the square), or eight inches measured round each mesh when wet, being the legal mesh for taking salmon that may be used in such district, contrary, &c.

No. 5.—*Using fixed Engines* (24 & 25 Vict. c. 109, s. 11).

For that you [or he the said A. B.] on &c., at &c., unlawfully placed [or used] a certain fixed engine, to wit, a —, for catching salmon in certain inland [or tidal] waters there called — [and the same engine was then so placed [or used] there for — days thereafter], contrary, &c.

No. 6.—*Using improper Dams for catching Salmon*
(24 & 25 Vict. c. 109, s. 12).

For that you [or he the said A. B.] on &c., at &c., unlawfully did catch ten [or attempt to catch] salmon there in certain waters called —, with a certain dam, the same not being a dam lawfully in use at the time of the passing of "The Salmon Fishery Act, 1861" [or not having attached thereto a fish pass approved by the Home Office], contrary to section 12 of the same act.

No. 7.—*Catching Salmon near Mill Dam* (36 & 37 Vict.
c. 71, s. 17).

For that you [or he the said A. B.] on &c., at &c., unlawfully did catch [or attempt to catch] otherwise than by rod and line, certain salmon, to wit [ten] salmon in the head [or tail] race of a certain mill there,
[or within fifty yards [below] a certain dam there], the said mill [or dam] not having attached thereto a fish pass approved by the Home Office, with a sufficient flow of water running through it as would then enable salmon to pass up and down it, contrary, &c.

No. 8.—*Taking or selling, &c. unclean Fish* (24 & 25 Vict.
c. 109, s. 14).

For that you [or he the said A. B.] on &c., at &c., unlawfully and wilfully did take from certain waters there called —,
[or unlawfully did buy, or sell, or expose for sale, or have in your or his possession there], certain unclean [or unseasonable] salmon [or trout or char], to wit [ten] —, contrary, &c.

No. 9.—*Taking the Young of Salmon* (24 & 25 Vict. c. 109, s. 15).

For that you [or he the said A. B.] on &c., at &c., unlawfully and wilfully did take [or destroy] the young of salmon, to wit [ten] —, there in certain waters called —,

[or unlawfully did buy, or sell, or expose for sale, or have in your or his possession there, the young of salmon, to wit, ten —],

[or unlawfully did place a certain device called —, for the purpose of obstructing the passage of the young of salmon there in certain waters called —],

[or unlawfully and wilfully did injure divers of the young of salmon in certain waters there called —],

[or unlawfully and wilfully did disturb a certain spawning bed, or bank, or shallow, there, on which the spawn of salmon then was],
contrary, &c.

No. 10.—*Disturbing Fish when spawning* (24 & 25 Vict. c. 109, s. 16).

For that you [or he the said A. B.] on &c., at &c., unlawfully and wilfully did disturb [or attempt to catch] in certain waters there called —, certain salmon when spawning [or when on or near their spawning beds] there, contrary, &c.

No. 11.—*Fishing in Close Time* (24 & 25 Vict. c. 109, s. 17).

For that you [or he the said A. B.] on &c., at &c., a place within the — fishery district, unlawfully did fish for [or catch, or attempt to catch, or kill] [otherwise than with a rod and line], certain salmon, to wit [ten] salmon, in certain waters there called —, the last-mentioned day being during the interval called the annual close season in force in that fishery district, that is to say, between the — day of — and the — day of — following, contrary, &c.

No. 12.—*Owner not removing Fixed Engines during Close Time* (24 & 25 Vict. c. 109, s. 20).

For that you [or he the said A. B.] on &c., at &c., being then the proprietor [or occupier] of a certain fishery for salmon there, called —, unlawfully, within thirty-six hours after the commencement of the close season, did omit to remove and carry away, from the waters within the said fishery, the inscales [or hecks, or tops, or rails] of the cruives [boxes and cribs], and all planks and temporary fixtures used for taking [or killing] salmon, and all other obstructions to the free

passage of fish in or through the cruives [cribs and boxes] within the said fishery; and you have [or he the said A. B. has] suffered the said things to remain unremoved for — days thereafter, contrary, &c.

No. 13.—*Fishing during Weekly Close Time* (24 & 25 Vict. c. 109, s. 21).

For that you [or he the said A. B.] on &c., at &c., within the — fishery district, about the hour of — o'clock in the —, at &c., unlawfully did fish for [or catch, or kill], otherwise than by a rod and line, [ten] salmon in certain waters there called —, the same day and hour being between the hour of — of the clock at noon on — and the hour of — of the clock on — morning, being the weekly close season in force in such fishery district, contrary, &c.

No. 14.—*Not leaving passage through Cribs or Traps during Weekly Close Time* (24 & 25 Vict. c. 109, s. 22).

For that you [or he the said A. B.] on &c., at &c., being then the proprietor [or occupier] of a certain fishery for salmon there called —, unlawfully did not, between — of the clock at noon on — and — of the clock on the — morning following, remove the inscales and rails of the boxes [cribs and cruives] used for taking salmon within the said fishery, and did not maintain and effectually secure a clear opening of not less than four feet in width from the bottom to the top, through the said cribs [boxes and cruives] for the passage of fish up and down through the same boxes [cribs or cruives], and [ten] salmon were unlawfully taken by means thereof, contrary, &c.

No. 15.—*Obstructing Person in erecting a Fish Pass* (24 & 25 Vict. c. 109, s. 23).

For that you [or he the said A. B.] on &c., at &c., unlawfully did obstruct one C. D. legally authorized in that behalf, and then erecting [or doing a necessary act to erect or maintain] a certain fish pass intended to be lawfully attached to a certain dam in a certain fishery for salmon there, called —, the property of E. F., contrary, &c.

No. 16.—*Wilfully Injuring a Fish Pass* (24 & 24 Vict. c. 109, s. 23).

For that you [or he the said A. B.] on &c., at &c., unlawfully [and wilfully] did injure a certain fish pass then lawfully attached to a certain dam in a certain fishery for salmon there, called —, the property of E. F., the expense of repairing the said injury amounting to the sum of —, contrary, &c.

84 CH. 7.—*Penalties under the Fishery Acts.*

No. 17.—*Preventing Salmon passing through a Fish Pass*
(24 & 25 Vict. c. 109, s. 23).

For that you [or he the said A. B.] on &c., at &c., unlawfully did [*state the act done*], for the purpose of preventing salmon from passing [or of taking salmon in its passage] through a certain fish pass then lawfully attached to a certain dam in a certain fishery for salmon there, called —, contrary, &c.

No. 18.—*Not attaching Fish Pass to future Dams* (24 & 25
Vict. c. 109, s. 25, see also 36 & 37 Vict. c. 71, s. 46).

For that you [or he the said A. B.] on &c., at &c., having, after the passing of "The Salmon Fishery Act, 1861," in certain waters there, called —, where salmon are found, constructed a new dam [or raised, or altered, so as to create increased obstructions to fish, a dam before then constructed], unlawfully did not attach and maintain attached thereto in an efficient state a fish pass of such form and dimensions as was determined by the Home Office, contrary, &c.

No. 19.—*Not supplying Water to Fish Pass* (24 & 25 Vict.
c. 109, s. 26).

For that you [or he the said A. B.] on &c., at &c., unlawfully did make default and did not keep shut the sluices for drawing off the water which would otherwise flow over a certain dam [or through a certain fish pass in the said fishery] in such manner as to cause the said water, which was not then required for milling purposes, to flow through the said fish pass, contrary, &c.

No. 20.—*Not making, &c., free Gaps in Fishing Weirs*
(24 & 25 Vict. c. 109, s. 28, subs. 1).

For that you [or he the said A. B.] on &c., at &c., being then the owner of a certain fishing weir there, called —,* which was without a legal free gap at the time of the commencement of "The Salmon Fishery Act, 1861," to wit, on the first day of October, 1861, unlawfully did not then, being within twelve months after the said first day of October, make such free gap,

[or from the asterisk*, in which was lawfully made a free gap, unlawfully did not maintain the said free gap, in accordance with "The Salmon Fishery Act, 1861:"]

and you [or he the said A. B.] did not make [or maintain] the said free gap for — days after the said first-mentioned day, contrary, &c.

No. 21.—*Altering Bed of River to Free Gap* (24 & 25 Vict. c. 109, s. 28, subs. 3).

For that you [or he the said A. B.] on &c., at &c., unlawfully made a certain alteration in the bed of a certain river there called —, in such manner as to reduce the flow of water through a certain free gap made in a certain fishing weir there, the property of E. F., contrary, &c.

No. 22.—*Placing Obstructions to Free Gaps* (24 & 25 Vict. c. 109, s. 28, subs. 4).

For that you [or he the said A. B.] on &c., at &c., unlawfully did place a certain obstruction [or use a certain contrivance, or do a certain act], to wit, —, whereby fish were then scared [or deterred, or prevented] from freely entering and passing up and down a certain free gap made in a certain fishing weir there, contrary, &c.

No. 23.—*Not observing Rules as to Construction of Boxes and Cribs in Fishing Weirs, &c.* (24 & 25 Vict. c. 109, s. 29).

For that you [or he the said A. B.] on &c., at &c., being then the owner of a certain fishing weir [or fishing mill dam] there* that had attached thereto a certain box [or crib] in contravention of "The Salmon Fishery Act, 1861," unlawfully did not bring the same into conformity with the said act, within six months after the commencement of the said act, to wit, the first day of October, 1861, and you [or he the said A. B.] unlawfully did fail therein [or fail to maintain the same] for — days after the expiration of the said period of six months, contrary, &c.

No. 24.—*Owner constructing Walls to Fishing Weirs, &c.* (24 & 25 Vict. c. 109, s. 30).

Proceed to the asterisk in the last form, then:*—to a certain box [or crib] therein, there was then unlawfully attached a certain spur [or tail] wall [or leader, or outrigger] of a greater length than twenty feet from the upper or lower side of the said box [or crib] and the same wall [or as the case may be] was continued there for — days thereafter, contrary, &c.

No. 25.—*Fishing in a Fishery District with Rod and Line without a Licence* (28 & 29 Vict. c. 121, s. 35).

For that you [or he the said A. B.] on &c., at &c., being a place within the fishery district, did, after a time appointed by law in that behalf, unlawfully* fish there for salmon [or for trout, or for char] with a rod and line, without a proper licence, contrary, &c.

No. 26.—*Fishing at Weir, or with Nets, without a Licence*
(28 & 29 Vict. c. 121, s. 36).

Proceed as in Form 25 to the asterisk, then:*—use there a certain fishing weir [or fishing mill-dam, or putt, or putcher, or net, or other instrument or device, to wit, a —, not being a rod and line] for catching salmon [or trout, or char], without having a proper licence for the same, contrary, &c.

No. 27.—*Not producing Licence when required* (28 & 29
Vict. c. 121, s. 37).

For that you [or he the said A. B.] on &c., at &c., a place within the — fishery district, being found fishing there, unlawfully did not, on being required so to do by one E. F., then being a licensee under the Salmon Fishery Acts, 1861 to 1876, and producing his licence [or a conservator producing the certificate of his being a conservator, or a water bailiff appointed in pursuance of the said acts, producing the instrument appointing him, or a constable authorized so to do by the justices in quarter sessions for the said county of —], produce your [or his] licence so to fish, or make any reasonable excuse for the non-production thereof, contrary, &c.

No. 28.—*Fishing for Trout in Close Time* (28 & 29 Vict.
c. 121, s. 64).

For that you [or he the said A. B.] on &c., at &c., being between the — day of — and the — day of — following the close season for trout in force at such place, did unlawfully fish for trout [or char] [or catch ten trout or char, or attempt to catch or kill certain trout or char, or did kill ten trout or char], you not having the same in your possession for the purpose of artificial propagation, or other purpose [if in a fishery district, add,—and not having the permission in writing of the board of the said district to catch the said trout or char, and to have the same in your or his possession for the purpose aforesaid], contrary, &c.

No. 29.—*Exporting unclean or unseasonable Salmon*
(26 Vict. c. 10, s. 3).

For that you [or he the said A. B.] on &c., at &c., unlawfully did export [or enter for exportation] from — aforesaid to parts beyond the seas, to wit, to —, certain unclean and unseasonable salmon [or certain salmon caught at — during the time at which the sale of salmon was prohibited there], to wit [two boxes containing ten salmon], contrary, &c.

No. 30.—*Not entering Salmon at Customs before Shipment between 2nd September and 2nd February* (28 & 29 Vict. c. 121, s. 65).

For that you [or he the said A. B.] on &c., at &c., between the 3rd day of September and the 2nd day of February following, unlawfully did ship [or export, or bring to a wharf for exportation] at — afore-said, two boxes containing ten salmon intended for exportation, the same not having been entered for that purpose with the proper officer of customs there, contrary, &c.

No. 31.—*Shooting Draft Net within 100 yards of another until the latter is landed* (36 & 37 Vict. c. 71, s. 14).

For that you [or he the said A. B.] on &c., at &c., unlawfully did shoot [or work] a seine or draft net for salmon in a certain river there called —, across the whole width thereof [or across more than three-fourths the width thereof], and within 100 yards from a certain other seine or draft net then already shot and being worked, before such last-mentioned net had been fully drawn in and landed, contrary, &c.

No. 32.—*Eels in a Salmon River* (36 & 37 Vict. c. 71, s. 15).

For that you [or he the said A. B.] on &c., at &c., unlawfully hung [or fixed, or used] in a certain salmon river there, called —, a certain basket [or net, or trap, or device] for catching eels, such last-mentioned day being between the 1st day of January and the 24th day of June, such basket exceeding ten inches in diameter, and not constructed so as to be fished with bait, contrary, &c.

No. 33.—*Placing Wheels or Traps for Lampern* (36 & 37 Vict. c. 71, s. 15).

For that you [or he the said A. B.] on &c., at &c., unlawfully placed upon the apron of a certain weir called — weir, situated in a certain salmon river there, called —, a certain basket [or trap, or device] for taking fish, not being a wheel or trap for taking lampers and not being used between the 1st day of August and the 1st day of March following, contrary, &c.

No. 34.—*Placing a Device to prevent Fish descending the Stream* (36 & 37 Vict. c. 71, s. 15).

For that you [or he the said A. B.] on &c., at &c., unlawfully placed in certain inland waters called — [or known as —], a certain device, to wit, — to catch or obstruct fish descending the stream, contrary, &c.

No. 35.—*Interfering with Salmon in Close Time* (36 & 37 Vict. c. 71, s. 16).

For that you [or he the said A. B.] on &c., at &c., a place within the — fishery district, such day being during the annual [or weekly] close season in force in such fishery district, within the true intent and meaning of the Salmon Fishery Acts, 1861 to 1873, unlawfully placed an obstruction [or used a contrivance, or did an act, to wit, —], for the purpose of deterring salmon passing up the river —, contrary, &c.

No. 36.—*Fishing, except with Rod and Line, 50 Yards above or 100 Yards below a Weir or Mill Race* (36 & 37 Vict. c. 71, s. 17).

For that you [or he the said A. B.] on &c., at &c., unlawfully did catch [or kill, or attempt to catch or kill], otherwise than with a rod and line [or scare, or disturb, or attempt to scare or disturb], a salmon within fifty yards above [or within one hundred yards below] a weir [dam or artificial obstruction], which hindered [or retarded] the passage of salmon [or in any waters under or appurtenant to any mill, or in the head race or tail race of any mill, or in any waste race or pool communicating with such mill race, or in any artificial channel connected with such weir or obstruction], or did fish with a rod and line in such a manner, to wit, by —, or in such a place, to wit [at the foot of the fish pass therein], near such weir or obstruction, so as to wilfully scare or hinder salmon from passing through the said fish pass therein [or over the part of], such weir or obstruction usually available to salmon for the purpose of a passage, contrary, &c.

No. 37.—*Buying, Selling, or having in Possession Salmon, Trout, or Char during Close Time* (36 & 37 Vict. c. 71, ss. 19, 20).

For that you [or he the said A. B.] on &c., at &c., unlawfully did buy [or sell, or expose for sale, or have in his or your possession for sale], between the — day of — and the — day of — following, a salmon [or between the 2nd day of October and the 1st day of February following, a trout or a char], contrary, &c.

No. 38.—*Taking Salmon without a Licence* (36 & 37 Vict. c. 71, s. 22).

For that you [or he the said A. B.] on &c., at &c., being a place within the — fishery district, unlawfully took [or killed, or attempted to take or kill] a salmon [or a trout, or a char] by other means than a properly licensed fishing weir, fishing mill-dam, fixed engine, instrument, net, or device, to wit, by a —, contrary, &c.

No. 39.—*Refusing to allow Water Bailiff to examine Weir*
(36 & 37 Vict. c. 71, s. 36).

For that you [or he the said A. B.] on &c., at &c., unlawfully did refuse to C. D., then being duly appointed water bailiff under the Salmon Fishery Acts, 1861 to 1876, for the — fishery district, access to a certain weir [or dam, or fishing weir, or fishing mill-dam, or fixed engine, or obstruction, or artificial watercourse] known as — weir [or dam, &c.], connected with certain water containing salmon, trout, or char, to wit, the river —, being within the said fishery district, contrary, &c.

No. 40.—*Refusing to allow a Water Bailiff to search a Boat*
(36 & 37 Vict. c. 71, s. 36).

For that you [or he the said A. B.] on &c., at &c., being a place within the — fishery district, unlawfully did refuse to allow C. D., then being a water bailiff duly appointed under the Salmon Fishery Acts, 1861 to 1876, for the said district,* to stop and search a boat used in fishing [or barge, or coracle, or other vessel, which he the said C. D. had reasonable cause to suspect contained salmon,] [or did resist or obstruct the said C. D. in searching, &c.] then on the said river, which said river was frequented by salmon, trout, or char, and within the said district, contrary, &c.

No. 41.—*Refusing to allow Water Bailiff to examine Nets*
(36 & 37 Vict. c. 71, s. 36).

Proceed as in last form to asterisk, and then:—*to search and examine certain nets [or baskets, or bags, or certain instruments, to wit, —] used in fishing [or in carrying fish] by you the said A. B. [or by certain persons, to wit, —], whom he the said C. D. had reasonable cause to suspect of having possession of fish illegally caught, contrary, &c.

No. 42.—*Offences against Bye-laws* (36 & 37 Vict. c. 71, s. 39).

For that you [or he the said A. B.] on &c., at &c., a place within the — fishery district, unlawfully did offend against a certain bye-law duly made, confirmed, and published in that behalf pursuant to the Salmon Fishery Acts, 1861 to 1876, that is to say, for that you the said — [or he the said A. B.] did [here state the act done as provided against by the bye-laws], contrary, &c.

No. 43.—*Rebuilding Weirs without Fish Pass* (36 & 37 Vict. c. 71, s. 46).

[This can be adapted from Form 18, ante, p. 84.]

No. 44.—*Rendering Fish Pass inefficient* (36 & 37 Vict. c. 71, s. 47).

For that you [or he the said A. B.] on &c., at &c., unlawfully did a certain act, to wit, —, whereby fish were [or were liable to be] obstructed in using a certain fish pass there, contrary, &c.

No. 45.—*Refusing to admit Inspector to inspect Weir, &c.* (36 & 37 Vict. c. 71, s. 56).

For that you [or he the said A. B.] on &c., at &c., being a place within the — fishery district, unlawfully did refuse to admit C. D., then being an inspector duly appointed by the Home Office [or then being a person duly appointed in writing by the board of conservators for the said fishery district under the provisions of the Salmon Fishery Acts, 1861 to 1876], to enter upon certain lands called [naming them] to inspect a certain weir [or dam, or fishing weir, or fishing mill-dam, or fixed engine, or obstruction, or mill race, or watercourse], contrary, &c.

No. 46.—*Owner or Occupier not preserving Gratings* (36 & 37 Vict. c. 71, s. 61).

For that you [or he the said A. B.] on &c., at &c., being a place within the — fishery district, being the owner [or occupier] of certain lands there [naming them] adjoining a certain grating erected under the authority of the Salmon Fishery Act, 1873 [to which a certain watercourse, or mill race, or cut, or leat, or channel there situate leads], unlawfully did not take reasonable means to prevent the said grating from injury [or from removal], contrary, &c.

No. 47.—*General Information for any of the above Offences.*

— } Be it remembered that on this — day of —, in the
to wit. } year of our Lord —, C. D. of the parish of —, in the
county of — [water bailiff], in his proper person cometh before the
undersigned, one of her majesty's justices of the peace in and for the
said county, and now giveth me the said justice to understand and be
informed, that one A. B. of the parish of — in the said county
[labourer], within the space of six calendar months now last past,
to wit, on the — day of —, at the parish of — in the county
aforesaid, unlawfully did [here insert a description of the offence],
contrary to the Salmon Fishery Act, 1861 [or 1865, or 1873], section
[30], whereby and by force of the said statute the said A. B. hath
forfeited a sum of money not exceeding — pounds, the same being
his [first] offence, to be paid and applied according to law: and

thereupon the said informant prayeth that the said A. B. may be caused to appear to answer the said information, and make his defence thereto.

C. D.

Exhibited [and sworn] before me the day and year first above written. J. S.

No. 48.—*Summons to the Defendant* (adapted from Schedule A. to 11 & 12 Vict. c. 43).

To A. B., of —, labourer.

Whereas information hath this day been laid before the undersigned, [one] of her majesty's justices of the peace in and for the said [county] of —, for that you [here state shortly the matter of the information]:* And whereas after the exhibiting of the said information, but before any proceeding had or taken thereupon, the matter and charge contained in the said information was duly deposed to before me, the said justice, by [upon the oath of] the said informant [or E. F. of &c.], being a credible witness in that behalf:* These are therefore to command you, in her majesty's name, to be and appear on —, at — o'clock in the forenoon, at —, before such justices of the peace for the said county as may then be there, to answer to the said information, and to be further dealt with according to law.

Given under my hand and seal this — day of —, in the year of our Lord —, at —, in the [county] aforesaid.

J. S. (L.S.)

No. 49—*Warrant where the Summons is disobeyed, or a Warrant in the First Instance.*

[These will be in the General Forms in Sched. B. and C. in 11 & 12 Vict. c. 43, inserting the matter between the asterisks ** as in the last form.]

No. 50.—*Conviction* (Schedule I. 2 to 11 & 12 Vict. c. 43, s. 14).

— } Be it remembered, that on the — day of —, in the
to wit. } year of our Lord —, at —, in the said [county], A. B. is
convicted before the undersigned, two of her majesty's justices of
the peace for the said [county], for that he the said A. B. [§c., stating
the offence, and the time and place when and where it was committed], and
we adjudge the said A. B. for his said offence to forfeit and pay the
sum of — [stating the penalty],* to be paid and applied according to
law, and also to pay to the said C. D. the sum of — for his costs
in this behalf: and if the said several sums be not paid forthwith [or
“on or before —next”] we adjudge the said A. B. to be imprisoned
in the [house of correction] at —, in the said [county] [and there to be
kept to hard labour] for the space of —, unless the said several sums

[and the costs and charges of conveying the said A. B. to the said house of correction] shall be sooner paid.

Given under our hands and seals the day and year first above mentioned, at —, in the [county] aforesaid.

J. S. (L.S.)
J. B. (L.S.)

* The following additions will be necessary to be inserted here in some cases after the aggregate penalty is stated:—

under 24 & 25 Vict. c. 109, s. 14,—“being after the rate of — for every salmon so killed, or taken, by the said A. B. as aforesaid.”

under 36 & 37 Vict. c. 71, s. 19,—“being after the rate of — for every salmon so bought, [or sold,] [or found,] as aforesaid.”

No. 51.—Commitment of Defendant on non-payment of Penalty and Costs (adapted from Schedule O. 1 to 11 & 12 Vict. c. 43).

To the constable of —, and to the keeper of the [house of correction] at — in the said [county] of —.

Whereas A. B., late of — [labourer], (hereinafter called “defendant,”) was on this day duly convicted before the undersigned [one], of her majesty’s justices of the peace in and for the said [county], for that [stating the offence as in the conviction]; and it was thereby adjudged that the said defendant for his said offence should forfeit and pay the sum of [£c., as in the conviction], and should pay to the said C. D. the sum of — for his costs in that behalf; and it was thereby further adjudged that if the said several sums should not be paid [forthwith], the said defendant should be imprisoned in the [house of correction] at —, in the said [county] [and there kept to hard labour] for the space of —, unless the said several sums [and the costs and charges of conveying the said defendant to the said house of correction] should be sooner paid: And whereas the time in and by the said conviction appointed for the payment of the said several sums hath elapsed, but the said defendant hath not paid the same or any part thereof, but therein hath made default: These are, therefore, to command you, the said constable of —, to take the said defendant, and him safely to convey to the [house of correction] at — aforesaid, and there to deliver him to the keeper thereof, together with this precept; and I do hereby command you the said keeper of the said [house of correction] to receive the said defendant into your custody in the said [house of correction], there to imprison him [and keep him to hard labour] for the space of —, unless the said several sums [and the costs and charges of conveying him to the said house of correction, amounting to the further sum of —,] shall be sooner paid; and for your so doing this shall be your sufficient warrant.

Given under my hand and seal this — day of —, in the year of our Lord —, at — in the county aforesaid.

J. S. (L.S.)

* * If this commitment be not made by the convicting justice there should be added after the signature of the justice,—“One of her

majesty's justices of the peace in and for the county of —;”
*the name of the convicting justice being inserted at the commence-
ment in the recital of the conviction (a).*

No. 52.—*Information on Oath to ground Search Warrant
for Salmon, Nets, &c.* (24 & 25 Vict. c. 109, s. 34).

*Proceed as in the General Form, No. 1, Oke's "Formulist," 5th ed.,
pp. 7, 8, to the asterisk*, then:—*that he the said C. D. hath probable
cause to suspect, and doth suspect and verily believe, that a breach of
the provisions of the Salmon Fishery Acts, 1861 to 1876 [*or of the
Freshwater Fisheries Act, 1878*], has been lately committed in
certain

[*or that certain salmon, or trout, or char, or freshwater fish, were
on the — day of — instant, illegally taken from a certain
river there, called the —, or that certain illegal nets or
engines are concealed in certain*

premises, to wit, a — in the occupation of A. B. at — in the
said county; and that the grounds of such the suspicions of the said
C. D. are as follow, namely [*here state them*].

No. 53.—*Search Warrant thereon* (24 & 25 Vict. c. 109,
s. 34).

— } To E. F., inspector [*or water bailiff, or conservator, or
to wit. } constable, or police officer*] of —.

Whereas information on oath hath this day been made to me the
undersigned, one of her majesty's justices of the peace in and for the
said county of —, by C. D. of &c., that [*&c. as in the information,
No. 52, supra, to the end*]: These are, therefore, in her majesty's
name, to authorize and empower you the said inspector [*or as the case
may be*], within one week from the date hereof, to enter the premises
above described for the purpose of detecting the offence above men-
tioned [*or the said concealed fish*] at such time or times in the day or
night as you may think necessary and expedient, and to seize all
illegal engines, or any salmon [*or trout, or char, or freshwater fish*]
illegally taken, that may be found by you on the said premises, in
order to the same being dealt with according to law.

Given under my hand and seal this — day of —, in the year of
our Lord —, at — in the county aforesaid.

J. S. (L.S.)

(a) For a form of commitment
of several offenders, see Oke's
"Magisterial Formulist," 5th
ed., pp. 25, 26. For other forms
to be used for enforcing attend-

ance of defendant, witnesses, or
on hearing, conviction, appeal,
&c., see Oke's "Magisterial
Formulist," 5th ed. pp. 7—60.

FORMS UNDER THE LARCENY ACT (24 & 25 VICT. c. 96).

No. 54.—*Taking, &c., Fish in Private Water belonging or adjoining such Dwelling House (indictable)* (Sect. 24).

For that he the said A. B. on &c., at &c., unlawfully and wilfully did take [or destroy] ten fish called chub, in certain water running through [or being in] certain land there situate, called —, adjoining [or belonging] to the dwelling house of [the said] C. D. there situate, of which said water the said C. D. was then and still is the owner [or in which said water the said C. D. had then and still has a right of fishery] contrary, &c.

No. 55.—*The like, not belonging or adjoining to Dwelling House of Owner* (Sect. 24).

For that you [or he the said A. B.] on &c., at &c., unlawfully and wilfully did take [or destroy]
[or attempt to take, or destroy]
otherwise than by angling between the beginning of the last hour before sunrise, and the expiration of the first hour after sunset, to wit, at — o'clock at —, [five] fish called [perch], of the price and value of sixpence, then being found in certain water, to wit, a pond [or stream] of water there, being the private property of [the said] C. D. [the complainant],
[or wherein the said C. D., the complainant, then had a private right of fishery],
and not running through or being in any land adjoining or belonging to the dwelling house of any person being the owner of the said water, or having a right of fishery therein, contrary, &c.

No. 56.—*The like, by Angling in the Day-time in Water adjoining a Dwelling House (summarily)* (Sect. 24).

For that you [or he the said A. B.] on &c., at &c., by angling between the beginning of the last hour before sunrise, and the expiration of the first hour after sunset, to wit, about the hour of — o'clock in the forenoon of the same day, unlawfully and wilfully did take [or destroy]
[or attempt to take, or destroy]
[five] fish called [perch], of the price and value of sixpence, then being found* in certain water there situate, called —, running through and being in certain land belonging [or adjoining] to the dwelling house of one [or the said] C. D., the complainant, and of which water the said C. D. was then the owner [or in which said water the said C. D. then had a private right of fishery], contrary, &c.

No. 57.—*The like, angling in other Water in the Day-time*
(Sect. 24).

Proceed to the asterisk in the last form, and then:*—in a certain pond [or stream] of water there, the private property of C. D. [or wherein C. D. then had a private right of fishery], and not running through or being in any land adjoining or belonging to the dwelling house of any person being the owner of the said water, or having a right of fishery therein, contrary, &c.

FORMS UNDER THE MALICIOUS INJURIES TO PROPERTY ACT
(24 & 25 VICT. c. 97).

No. 58.—*Damaging Fish Ponds (indictable)* (Sect. 32).

For that he the said A. B., on &c., at &c., unlawfully and maliciously did cut through [or break down, or destroy] the dam [or floodgate, or sluice] of a certain fish pond of [the said] C. D.,
[or of certain water which is private property, and of which the said C. D. was then and still is the owner, or in which said water the said C. D. then had and still has a right of fishery]
there situate, with intent thereby then to take [or destroy] the fish then being in the said pond [or water],
[or to cause the loss and destruction of divers of the fish then being in the said pond, or water],
contrary, &c.

No. 59.—*Putting Lime in Fish Ponds (ib.)* (Sect. 32).

For that he the said A. B., on &c., at &c., unlawfully and maliciously did put a quantity of lime [or noxious material, to wit, —], into a certain fish pond of [the said] C. D.
[or into certain water, or into a certain salmon river called —,
&c. as in the last form], there situate,
with intent thereby to destroy the fish then being in the said pond [or water, or salmon river], contrary, &c.

No. 60.—*Destroying Mill Dam, &c. (ib.)* (Sect. 32).

For that he the said A. B., on &c., at &c., unlawfully and maliciously did cut through [or break down, or destroy] the dam [or floodgate] of a certain pond [or reservoir, or pool] there, of C. D., contrary, &c.

FORM UNDER THE FISHERIES (DYNAMITE) ACT, 1877
(40 & 41 VICT. C. 65).

No. 61.—*Using of Dynamite to kill Fish.*

For that you [*or he the said A. B.*] on &c., at &c., unlawfully did use dynamite [*or a certain explosive substance, to wit, —*] to kill fish in certain waters there situate, known as [*name them*], contrary, &c.

If it is desired to proceed by indictment instead of summarily, use Form 59, filling up the blank after noxious material with the word “dynamite,” or the name of the explosive used.



FORMS UNDER THE FRESHWATER FISHERIES ACT, 1878.

No. 62.—*Taking Fish during Close Time* (Sect. 11).

For that you [*or he the said A. B.*] on &c., at &c., did unlawfully fish for [*or catch, or attempt to catch or kill*] freshwater fish in a certain river [*or lake, or tributary, or stream, or water connected or communicating with such river or lake*] there situate, called —, contrary, &c.



No. 63.—*Buying or selling Freshwater Fish during Close Time* (Sect. 11.)

For that you [*or he the said A. B.*] on &c., at &c., being between the 15th day of March and the 15th day of June, unlawfully bought [*or sold, or exposed for sale, or had in his [or your] possession for sale*] certain freshwater fish, to wit [*three chub*], contrary, &c.

The general forms will be the same as those in common use. For these, see Oke's “Magisterial Formulist,” 5th ed. pp. 7—68.

APPENDIX.

A.—*List of the Forty-one Fishery Districts in England and Wales.*

Avon, Brue and Parrett, Avon and Erme, Avon and Stour, Axe, Camel, Cleddy, Clwydd and Elwy, Conway, Coquet, Dart, Dee, Dovey, Dwyfach, Eden, Esk, Exe, Fowey, Frome, Kent, Lune, Ogmore, Otter, Ouse (Sussex), Rhymney, Ribble, Rother, Seiont, Severn, Stour, Tamar and Plym, Taff and Ely, Taw and Torridge, Tees, Teify and Aeyron, Teign, Towy, Trent, Tyne, Usk, Wye, and Yorkshire.

B.—*List of Fishery Districts in which the Annual Close Time has been varied.*

	<i>Nets.</i>	<i>Rods.</i>
Avon and Erme	21st Sept. to 31st Mar.	21st Nov. to 31st Mar.
Avon and Stour	15th Aug. to 1st Feb.	2nd Oct. to 1st Feb.
Axe . . .	20th Sept. to 30th Apr.	20th Nov. to 30th Apr.
Camel . .	1st Oct. to 30th Apr.	15th Nov. to 30th Apr.
Cledy . .	15th Sept. to 15th Mar.	30th Nov. to 15th Mar.
Clwydd and Elwy	15th Sept. to 15th May	15th Nov. to 15th May.
Conway . .	15th Sept. to 30th Apr.	15th Nov. to 30th Apr.
Coquet . .	15th Sept. to 25th Mar.	15th Nov. to 25th Mar.
Dovey . .	14th Sept. to 30th Apr.	20th Nov. to 30th Apr.
Dwyfach . .	15th Sept. to 1st Mar.	15th Nov. to 1st Mar.
Fowey (a) .	1st Oct. to 31st Mar.	1st Nov. to 2nd Feb.

(a) Only applies to that part of the Fowey district above Lostwithiel Bridge.

	<i>Nets.</i>	<i>Rods.</i>
Kent (b) . . .	15th Sept. to 1st Mar.	1st Nov. to 1st Feb.
Ogmore . . .	15th Sept. to 30th Apr.	1st Nov. to 30th Apr.
Ouse (Sussex) . . .	1st Sept. to 1st Apr. . .	1st Nov. to 1st Apr.
Taw and Torridge . . .	21st Sept. to 30th Apr. . .	16th Nov. to 31st Mar.
Teign . . .	1st Sept. to 2nd Mar.	21st Nov. to 2nd Mar.
Usk.	1st Sept. to 1st Apr. . .	2nd Nov. to 1st Apr.
Wye	1st Sept. to 1st Apr. . .	2nd Nov. to 1st Apr.
Yorkshire.	1st Sept. to 1st Feb. . .	16th Nov. to last day of Feb.

N.B.—All dates inclusive.

C.—List of Districts that have altered the Weekly Close Time.

Avon and Stour . . .	Noon on Saturday to noon on Monday.
Dee	{ Below Chester weir:—Midnight on Friday to midnight on Sunday. Above Chester weir:—Noon on Saturday to noon on Monday.
Eden	{ From Public Waters to North British Railway Bridge:—6 o'clock a.m. on Saturday to 6 o'clock a.m. on Monday. In all other parts of District:—Noon on Saturday to noon on Monday.
Esk (Yorkshire) . . .	Noon on Saturday to noon on Monday.
Lune	{ 6 o'clock a.m. on Saturday to 6 o'clock a.m. on Monday.
Ouse	
Ribble.	
Rother	
Taff and Ely	Noon on Saturday to noon on Monday.
Taw and Torridge . .	Midnight on Friday to midnight on Sunday.
Teign	{ 6 o'clock a.m. on Saturday to 6 o'clock a.m. on Monday.
Usk	Noon on Saturday to noon on Monday.

(b) Only applies to that part of the district south of a line drawn from ordinary high water-mark at south end of Arnside Park to the ordinary high water-mark at the south end of Holme Island,

and from thence in a direction due west to the Cartmel shore, and which includes the rivers Kent, Bela, Winster, and their tributaries.

D.—*Use of Gaff.*

The use of a gaff in connection with a rod and line is prohibited within the following districts, except between the following dates:—

Camel . . .	1st May and 30th September.
Conway . . .	30th April and 31st October.
Dart . . .	2nd April and 31st October.
Dovey . . .	31st May and 20th October.
Eden . . .	1st July and 1st November.
Kent . . .	2nd June and 31st October.
Ribble . . .	1st May and 15th November.
Seiont . . .	1st March and 1st November.
Taff and Ely . .	1st June and 1st November.
Taw and Torridge	1st June and 15th November.
Teify and Aeyron	1st April and 15th October.
Teign . . .	1st March and 1st September.
Usk . . .	1st May and 1st November.
Wye . . .	1st May and 1st September.
Yorkshire . . .	1st May and 1st November.

N.B.—All dates inclusive.

E.—*Districts that have altered the Close Season for Trout.*

Cleddy . . .	29th Sept. to 1st Mar. (<i>for all modes of fishing</i>).
Dart . . .	2nd Oct. to 28th Feb. („ „).
Dee . . .	14th Oct. to 14th Feb. (<i>for rod and line only</i>).
Taff and Ely . .	20th Sept. to 1st Feb. (<i>for all modes of fishing</i>).
Teign . . .	1st Oct. to 2nd Mar. („ „).

N.B.—All dates inclusive.

INDEX.

ABETTERS may be punished as principals, 65.

ACTION,

for obstructing several fishery, 26.
for quieting title to fishery, 26.

ADVERTISEMENT,

of time when it is illegal to fish without licence, 46, 47, 78.
of exemption of Freshwater Fisheries Act by Board of Conservators, 59.
of licence duties, 46, 52.

AIDERS AND ABETTERS, punishment of, 65.

ALTERATION,

of annual close season. *See* CLOSE SEASON.
of close season for char, 56.
of weekly close season. *See* CLOSE SEASON.
of fishery districts. *See* FISHERY DISTRICTS.
of bed of river to free gaps, form for summons, 85.

ANCIENT NAVIGABLE RIVER,

what is, 2.
ownership of soil in, 4, 5.
right to fish in, 2, 3.
ownership of banks of, 6.

ANGLER,

arrest of, 25.
when arrest lawful, 26.
punishment of, 22.
liable to be searched, 54.
to be required to produce licence, 48.
seizure of tackle of, 24.
exemption from further penalty by, 24.
who may seize, 25.
exception in Larceny Act in favour of, 25, 26.
right to fish caught, 27.
form of information against, 94, 95.

ANGLING,

- right of owner of several fishery as to, 12.
- exception in favour of owner, under Freshwater Fisheries Act, 58.
- in day time, penalty for, 22.
- in water adjoining a dwellinghouse, 22.
- in other water, 22.
- forms of information, 94, 95.
- definition of daytime, 25.
- claim of right, 23.
- no difference from other kinds of fishing, 7.
- in mill races, 19, 30.
- near a fish pass, 30.
- use of gaff, 38.
- lease of, 11.
- rights of lessee, 58, 60.
- places where prohibited, 19, 30.
- without licence, penalty for, 47.
- form of information, 85.
- close time for salmon, 97.
 - for trout, 39, 57.
 - for char, 39, 57.

ANNUAL CLOSE SEASON. See CLOSE SEASON.

- variation of, 17.
- list of districts which have varied, 97.
- removal of fixed engines during, 30.

APPEAL,

- to quarter sessions against convictions under Salmon Fishery Acts, 75.
- to superior courts by case stated, 76.

APPLICATION of Salmon Fishery Acts to trout and char, 39.**APPOINTMENT,**

- of conservators. *See* BOARD OF CONSERVATORS.
- of water bailiffs. *See* WATER BAILIFFS.

APPREHENSION of persons illegally fishing at night, 55.**APPURTENANT,**

- fishery may be, to land, 11.
- to a manor, 11.
- not to a right of pasture, 11.

ARREST,

- of anglers, 25.
- of poachers, 26.
- of persons illegally fishing at night, 55.
- under Salmon Fishery Acts, 55.
- under Larceny Act, 26.
- under Malicious Injuries to Property Act, 28.

ARTIFICIAL PROPAGATION,

- consent of conservators required for the possession of salmon, trout, or char, for, 41.
- for possession of salmon, trout, or char roe for, 39.
- freshwater fish for, 58.
- no consent required for, 61.

AVON AND ERME, annual close time on, 97.

AVON AND STOUR,

- annual close time on, 97.
- weekly close time on, 98.

AXE, annual close time on, 97.

BAGS, power of water bailiff to search, 54.

BAILIFF. *See* **WATER BAILIFF**.

BAIT,

- exception in Freshwater Fisheries Act as to capture of fish for, 59.
- using roe as, penalty for, 38, 39.
- form of information for, 81.

BANKS OF RIVERS,

- ownership of, 6.
- rights to, 6.
- no right in public to use for fishing, 6.
- power of water bailiff to traverse, 53, 55.

BASKETS, power of water bailiff to search, 54.

BED OF RIVER,

- penalty for altering near fish pass, 85.
- form of information for, 85.

BED SPAWNING, 30.

- penalty for disturbing, 30.
- form of information for, 82.

BILL OF PEACE, 26.

BOARD OF CONSERVATORS,

- formation of, 42.
- alteration of, 42.
- combination of, 42.
- under Salmon Fishery Acts, could only be formed for salmon rivers, 42.
- under Freshwater Fisheries Act, may be formed for trout or char rivers, 42.
- powers of,
 - to appoint water bailiffs, 43.
 - to make byelaws, 43.
 - to alter close season for salmon, trout, or char, 17.
 - to alter weekly close season, 18.
 - to fix time for use of gaff, 99.
 - to regulate use of nets, 19.

BOARD OF CONSERVATORS—continued.**powers of—continued.**

- to grant leave to angle during close time, under Freshwater Fisheries Act, in public waters, 58.
- to exempt part of or whole of district from Freshwater Fisheries Act, 59.
- to exempt certain fish from operation of act, 59.
- to give leave for possession of salmon, trout, or char, for artificial propagation, 41.
- to give leave for possession of salmon, trout, or char roe for artificial propagation, 39.
- to issue licences for salmon, 45.
- to issue licences for trout or char, 43.
 - for the season, for the week or day, 43.
- to fix licence duty, 48.
- to vary licence duty, 52.
- to erect gratings, 43.
- to make fish passes, 43.
- to appoint persons to inspect weirs, &c., 90.
- minutes of convictions against Salmon Fishery Acts to be sent to, 73.
- evidence of proceedings at meetings of, 77.
- power of member of, to enter land, 55.
- payment of penalties to, 70.
- advertisements as to licences, 78.

BOATS,

- used in fishing, power of water bailiff to search, 54.
- form of information for not allowing, 89.

BOUNDARIES,

- of counties, offences committed on, 79.
- of parishes, 79.
- of petty sessional divisions, 79.

BOXES,

- passage of fish through during weekly close time, 30.
- form of information for not keeping, 83.

BREAKING DOWN,

- fish pond, penalty for, 27.
- form of information for, 95.
- mill-dam, penalty for, 27.
- form of information for, 95.

BRIDGE, right of fishing from, 5.**BUILDING,**

- wall to fishing weir contrary to Salmon Acts, penalty for, 85.
- form of information for, 85.
- weir without proper fish-pass, penalty for, 84, 89.
- form of information for, 84.

BUYING,

- salmon during close time, penalty for, 88.
 - form of information for, 88.
- trout or char during close time, 41.
 - penalty for, 41.
 - form of information for, 88.
- freshwater fish during close time, 59.
 - penalty for, 59.
 - form of information for, 96.

BYE-LAWS,

- power of board to make, 43,
 - as to annual close time for salmon, 97.
 - as to weekly close time for salmon, 98.
 - as to annual close time for trout and char, 56, 57.
 - as to use of gaff, 99.
- penalty for offending against, 89.
 - form of information for offence against, 89.

CAMEL,

- alteration of annual close time on, 97.
- time for use of gaff in, 99.

CAPTURE,

- of salmon, trout or char otherwise than with licensed instrument, 51.
 - penalty for, 30, 51.
 - form of information for, 88.

CAPTURED FISH, property in, 27.**CATCHING SALMON,**

- near mill, 30.
- fifty yards above mill-dam, 30.
- one hundred yards below mill-dam, 30.
- in mill-race, 30.
 - penalty for, form of information for, 88.

CERTIFICATE,

- of formation of fishery district, evidence, 77.
- of appointment of conservators, 48.

CERTIORARI, when obtainable, 3.**CHAR,**

- extension of Salmon Fishery Acts to, 37, 56.
- formation of fishery districts for river containing, 42.
- taking with lights, &c., 38.
 - penalty for, 38.
 - form of information for, 80.
- using roe for fishing for, 19, 38, 39.

CHAR—continued.

- having char roe in possession, 39.
 - penalty for, 39.
 - form of information for, 80.
- close time as to, 39.
 - power to vary, 17, 56.
 - penalty for fishing for, during, 39.
 - form of information for, 86.
- sale of, during close time, 39
 - penalty for, 39.
 - form of information for, 86.
 - no power to vary, by bye-laws, 56, 57.
- licence required to fish for, 43.
 - penalty for fishing for, without, 19, 47.
 - form of information for, 86.
- power of water bailiff for protection of, 54.
 - of search for, 54, 56.
 - of entry on land to protect, 55.
- search warrant may be obtained for, 56.
 - form of search warrant, 93.

CLAIM OF RIGHT,

- when set up, 3.
- when justice's jurisdiction ousted by, 23, 24.
- must be *bonâ fide*, 23.
- must be of a right that can exist in law, 24.
- remedy if justices disregard, 67.

CLEDDY,

- close time on, 97.
- for trout in, 99.

CLOSE TIME,

- for salmon, 17.
- annual, generally, 17, 97.
 - for net, 97.
 - for rod and line, 97.
- power to vary, by bye-laws, 17.
- list of rivers which have varied, 97.
- for trout or char, 17.
 - now extends to all waters, 37, 39.
 - power to vary as to trout, 56, 57.
 - power to vary as to char, 56.
- penalty for fishing during, form of information for, for salmon, 82.
 - for trout, 86.
- forfeiture of instruments used in fishing, 40.
 - not if varied by bye-laws, 58.
 - no forfeiture of instruments for trout or char, 40.
- for freshwater fish, 58.
 - penalty for fishing during, 59.
 - form of information for, 96.
- weekly, for salmon, 18.
 - power to vary by bye-laws, 18.
 - list of districts that have varied, 98.

CLOSE TIME—*continued.*

weekly, for salmon—*continued.*

penalty for fishing during, 18.

form of information for, 83.

sale of fish during annual, 88.

penalty for selling salmon during, form of information for, 88.

for selling trout and char, 41.

form of information for, 88.

for selling freshwater fish, 58.

form of information for, 96.

CLWYDD AND ELWY, close time on, 97.

COMMENCEMENT of Freshwater Fisheries Act, time for, 37.

COMMITTEE. *See* **FISHERY COMMITTEE.**

COMMON, tenants in, 15.

COMMON FISHERY, definition of, 1, 12.

COMMON OF FISHERY, 14.

what is, 14.

in what cases it exists, 14.

difference between and common fishery, 12.

CONSERVATORS. *See* **BOARD OF CONSERVATORS.**

powers under Freshwater Fisheries Act, 34, 35.

CONSTRUCTION,

of free gap, rules as to, 84.

penalty for not observing, 84.

form of information for not observing, 84.

of walls to mill-dams and weirs contrary to Salmon Fishery Act, 85.

penalty for, 85.

form of information against, 85.

of new weir without fish pass, 84, 89.

penalty for, 84, 89.

form of information for, 84, 89.

of Freshwater Fisheries Act, 36.

CONVEYANCE,

of fishery must be by deed, 11.

if no restrictive words a several fishery passes, 11.

CONVICTION,

form of, 91.

penalty on second, against Salmon Fishery Acts, 72.

on third, 72.

power to award imprisonment on third, for certain offences, 74.

forfeiture of licence on second, 74.

minutes of, to be sent to board of conservators, 73.

appeal to quarter sessions against, 75.

High Court of Justice on case stated against, 68.

may be quashed on certiorari, 3, 4.

enforcing, 71.

CONWAY,

close time on, 97.
use of gaff on, 99.

COQUET, close time on, 97.**CRIB,**

free passage to be left through, during weekly close time, 30.
penalty for not doing so, 83.
form of information, 83.

CROWN,

free fishery owes its origin to, 13.
several fishery does not merge in, 11.

CRUIVE,

free passage to be left through, during weekly close time, 30.
penalty for not doing so, 83.
form of information, 83.

CUSTOM as to right to fish cannot legally exist, 15.**CUSTOMS,**

not entering salmon for exportation with proper officer of, 87.
penalty for, 87.
form of information for, 87.

DAM,

using, for fishing for salmon, 29.
penalty for, 81.
form of information, 81.
fishing 50 yards above, 30.
100 yards below, 30.
penalty for, 81.
form of information as to, 81.
altering or rebuilding without making fish pass, 84.
penalty for, 84.
form of information for, 84.
breaking down, 27.
penalty for, 28.
form of information for, 95.

DART,

use of gaff on, 97.
close season for trout on, 99.

DAY LICENCE for trout and char, 43.**DAYTIME,** definition of, 25.**DECOY WATER,** bailiff not to enter, 55.**DEE,**

weekly close time on, 98.
use of gaff on, 99.
close season for trout on, 99.

DEED,

- necessary to convey fishery, 11.
- for lease of fishery, 12.
- several fishery can only be created by, 11.

DEFINITION,

- of daytime, 25.
- of fishery, 1.
- of several fishery, 9.
- of free fishery, 12.
- of common of fishery, 14.
- of freshwater fish, 58.
- of salmon river, 42.

DISQUALIFICATION of justices, 76.

DISTRICT,

- may be formed for trout or char, 35, 42.
- formation of, 42.
- combination of, 42.
- dissolution of, 42.
- may be exempted from Freshwater Fisheries Act, 59.
- in whole or in part, 59.
- certificate of formation of, how proved, 77.

DISTURBING SALMON SPAWNING, 30.

- penalty for, 82.
- form of information for, 82.

DOCUMENTARY EVIDENCE ACT, provisions of, 77.

DOVEY,

- close time on, 97.
- use of gaff on, 99.

DRAFT NET,

- shooting within 100 yards of another, 19.
- licence for, 48.

DUTY. See LICENCE DUTY.

DWELLING-HOUSE,

- fishing near, 22.
- penalty for, 22.
- form of information for, 94.
- angling near, 22.
- penalty for, 22.
- form of information for, 94.
- water bailiff not to enter, 55.
- search warrant for, 56.

DWYFACH, close season on, 97.

DYNAMITE,

- prohibition on using, for taking fish, 61.
- in public waters, 62.
- penalty for, 62.
- form of information for, 96.
- in private waters, 27, 61.
- penalty for, 28.
- form of information for, 95, 96.

EASEMENT, fishery not an, 14.**EDEN, use of gaff on, 99.****EELS,**

- in salmon rivers, provision as to, 18.
- close time for, 18.
- baskets for, 18.
- nets for, 18.
- penalty on taking, during close time, 87.
- form of information for, 87.

ELVERS,

- prohibition of taking, in Severn fishery district, 33.
- penalty for, 33.

ELY,

- close time on, 97.
- weekly close time on, 98.
- close time for trout on, 99.

ENDORSEMENT,

- on licence, rules as to, 49.
- penalty for violation of, 50.
- on writ, form of, 27.

ENFORCEMENT

- of conviction, 71.
- of penalty, 69.

ENGINE,

- use of fixed, for taking salmon illegal, 19.
- penalty for, 81.
- form of information, 81.

ENTRY ON LAND, power of water bailiff as to, 53.**ESK, alteration of weekly close time on, 98.****EVIDENCE,**

- application of Documentary Evidence Act, 77.
- certificate of formation of district, 77.
- legality of scale of licence, 77.

EVIDENCE—continued.

- proceedings at meetings of conservators, 77.
- time after which it is illegal to fish without licence, 78.
- on information, 66.

EXCEPTIONS,

- from Freshwater Fisheries Act, 58.
- salmon, trout and char, 58.
- pollan, 58.
- fish that migrate to open sea, 58.
- owner of several fishery where trout or greyling specially preserved, 58.
- Board of Conservators allowing angling in public fisheries, 58.
- fish for bait, 59.
- fish for scientific purposes, 59.

EXPLOSIVE SUBSTANCES,

- prohibition of using, for taking fish, 18, 62.
- in public water, 62.
 - penalty for, 62.
 - form of information for, 96.
- in private water, 61.
 - under Malicious Injuries Act, 27.
 - penalty for, 28.
 - form of information for, 96.
- under Freshwater Fisheries Act, 62.
 - penalty for, 62.
 - form of information for, 96.

EXTENSION of Salmon Fishery Acts to trout and char, 37.**EXTENT of Freshwater Fisheries Act, 36.****FARM TENANTS, right of, to fish, 11.****FENCE MONTHS in Thames, 33.****FISH,**

- freshwater, definition of, 58.
- restrictions on times of taking, 17.
- prohibited modes of taking, 18.
- obstructing fish descending stream in salmon rivers, 19.
- roe, prohibition of using, 19.
- unclean, what are, 41.
- unseasonable, what are, 41.
- prohibition of taking, 40.
- penalty for, 40.
- form of information for, 81.
- killing with solid matter, 80.
- with liquid matter, 80.
- size of, 20.
- stealing from a tank, 21.

FISH—continued.

- illegally caught, property in, 27.
- poisoning, 27.
- forfeiture of freshwater, illegally caught, 59.
- kinds of, may be exempted from operation of Freshwater Fisheries Act, 59.

FISHERY,

- definition of, 1.
- kinds of, 9.
- public, 1.
 - small extent of, 1.
 - definition of, 1.
 - places where public fisheries exist, 2.
- private, 9.
 - where it exists, 9.
 - kinds of, 9.
- several, 9.
 - definition of, 9.
 - does it involve ownership of soil, 9.
 - must be derived from owner of soil, 10.
 - can be lost by non-user, 10.
 - does not merge in crown, 11.
 - can only be granted by deed, 11.
 - may pass as appurtenant to a manor, 11.
 - to land, 11.
 - not to a right of pasture, 11.
 - grant of fishery is *prima facie* of a, 11.
 - rights of owner of, 12.
 - under Freshwater Fisheries Act may kill fish, 58.
 - may give leave to angle, 58.
- free, what is, 12.
 - where it exists, 12, 13.
 - must be derived from crown, 13.
- common of, 14.
 - where it exists, 14.
 - rights of, 14.
- not an easement, 14.
- a profit à prendre, 15.
- lord of manor's rights to, 15.
- no presumption of lord's rights to, 15.
- rating of, 15.
- offences in public, 17, 18.
 - in private, 21.

FISHERY DISTRICTS,

- formation of, 42.
- combination of, 42.
- dissolution of, 42.
- certificate of formation of, 77.
- may be formed for trout or char, 42.
- exemption of, from Freshwater Fisheries Act, 59.

FISHERY COMMITTEE,

- application for, 42, 43.
- proceedings of, 43.
- dissolution of, 43.

FISHERMEN,

- seizure of tackle of, 24.
- who may seize, 25.
- under what circumstances, 25.

FISHING,

- right of, 1.
 - from bridge, 5.
 - from road, 5.
 - from towing-path, 5.
 - from bank of navigable rivers, 6.
 - no length of time will give, 6.
- for salmon, 17.
 - use of fixed engine forbidden, 19.
 - near a weir or mill, 19.
 - use of fish roe for, forbidden, 19.
 - use of certain nets forbidden, 19.
 - fishing near mill-dam forbidden, 19.
 - fishing weir, 29.
 - in private fisheries, restrictions on, 29.
 - during close season, penalty for, 82.
 - during weekly close season, penalty for, 83.
- using salmon, trout, or char roe for, 19.
- for salmon, trout, or char without a licence, 19.
- at night, person illegally, may be arrested, 55.

FISH-PASS,

- not affixing, to new weir, 84, 89.
 - penalty for, 84, 89.
 - form of information, 84, 89.
- injury, 83.
 - penalty for, 83.
 - form of information, 83.
- rendering less effective, 90.
 - penalty for, 90.
 - form of information for, 90.
- supply of water to, 84.
 - penalty for, 84.
 - form of information, 84.
- rebuilding weir without, 89.
 - penalty for, 84.
 - form of information, 89.

FORFEITURE,

- of licence, 73.
- of fish, 59.
- of implements, 59.

FORMATION,

- of districts, 42.
- evidence of, 77.

FORMS (under Salmon Fishery Acts),

- bed of river, altering, 85.
- bye-laws, offences against, 89.
- catching salmon near mills, &c., 81, 88.
- close time, fishing during, 82.
 - selling fish during, 88.
 - interfering with salmon during, 88.
 - not removing fixed engine during, 82.

dam, injuring, 95.

disturbing salmon spawning, 82.

draft net, illegally using, 87.

dynamite, using, 96.

entry of salmon for exportation, 87.

explosive, using, 96.

eels in salmon rivers, catching during close time, 87.

exporting salmon during, 87.

- unclean or unseasonable salmon, 86, 87.

fishing near weir, 81, 88.

- with lights or spears, 80.

- with fish roe, 80.

- with improper nets, 81.

- with rod and line without licence, 85.

- with net without licence, 86.

- without licensed instruments, 88.

fish pass, obstructing erection of, 83.

- injuring, 83.

- preventing salmon passing through, 84.

- not attaching, to mill dam, 84, 89.

- supplying with water, 84.

- rebuilding weir without, 89.

- rendering inefficient, 91.

fish descending stream, obstructing, 87.

- unclean or unseasonable, taking or selling, 81, 88.

fishing weir, 81.

- not making free gap in, 84.

- altering bed of weir, 85.

- placing obstructions to free gap, 85.

- violating rules as to construction of free gap, 85.

gratings, not maintaining, 90.

licence, not producing, 86.

- taking salmon without, 88.

- trout or char without, 88.

mixing poisonous substance in river, 80.

placing wheels on weirs, 87.

trout and char, selling in close time, 88.

unclean salmon, trout, or char, taking, 81.

water bailiff, refusing to allow, to examine weirs, 89.

- boats, 89.

- nets, 89.

FORMS (under Salmon Fishery Acts)—*continued*.

- weir, refusing to allow inspection of, 90.
- construction of spur walls in, 85.
- weekly close time, fishing during, 83.
- not leaving free passage through engine during, 83.
- young of salmon, taking, 82.

FOWEY, close time on, 97.

FREE GAP, 30.

FREE PASSAGE through boxes, cribs and weirs during weekly close time, 30.

FRESHWATER FISHERIES ACT,

- angling, exemption in favor of, 58.
- application of penalties, 61, 70.
- bait, exemption, if fish taken for, 59.
- close time for freshwater fish, 58.
- commencement of act, 37.
- construction of act, 36.
- dynamite, prohibition of use of, 61.
- entry of suspected places, 56.
- extension of Dynamite Act to private waters, 61.
- extent of act, 37.
- exemption of part of district, 59.
- of kinds of fish, 59.
- extension of Salmon Fishery Acts, 37.
- of Dynamite Act, 61.
- formation of district for trout and char, 42.
- forfeiture of fish, 59.
- of nets and implements, 59.
- freshwater fish, definition of, 58.
- close time for, 58.
- justices may grant warrants to search suspected places, 56.
- licences, provisions as to, 43.
- power of water bailiffs, 52.
- salmon rivers, meaning of, 42.
- short title, 36.
- search warrant, 56.
- several fisheries, rights of owner of, 58.
- scientific purpose, exception in favour of, 58.
- sale of fish, 59.
- second conviction, penalty on, 59.
- Severn, provision as to, 62.
- suspected places, warrant to search, 56.
- water bailiffs, power of, 52.

FRY OF EELS, close time for, 33.

GAFF,

- use of illegal for salmon, trout, or char, 38.
- except as auxiliary to angling, 38.
- person using does not need licence, 51.
- times at which use of, is prohibited on various rivers, 99.

GENERAL LICENCE, provision as to, 46.

GRANT OF FISHERY must be by deed, 11.

GRANTING LICENCES, rules as to, 45.

GRAYLING, application of Freshwater Fisheries Act when specially preserved, 58.

HARD LABOUR, power to award, on third conviction in certain cases under Salmon Fishery Acts, 74.

HEARING of information, 66.

ILLEGAL FISHING at night, persons found may be arrested, 55.

IMPLEMENTS OF FISHING, seizure of, 24.

IMPRISONMENT, power to award on third conviction, under Salmon Acts, for certain offences, 74.

INJUNCTION to restrain fishing in private waters, 26.

ISSUE OF LICENCES, rules as to, 45.

JACK,
prohibition of use of, 19.
penalty for, 38.
form of information, 80.

JOINT tenants of fishery, 15.

JUNE 15th, close season for protection of freshwater fish terminates on, 58.

JUSTICES,
disqualification of, 76.
may grant search warrant for suspected place, 56.
jurisdiction of, when ousted by claim of right, 23.

KENT,
close time in, 98.
use of gaff in, 99.

KINDS of private fishery, 9.

KILLING FISH,
by prohibited modes, 18.
by placing noxious materials in salmon rivers, 20.
by using dynamite, 18.
by using explosive substances, 18.
by poisonous liquid matters, 20.
by poisonous solid matters, 20.
at prohibited times, 17.

LAMPERNS, close time for, 18.

- LAND,**
fishery will pass as appurtenant to, 11.
entry on, by water bailiff, 53.
- LARCENY,**
of fish, 21.
Larceny Consolidation Act, 24 & 25 Vict. c. 96, s. 24...21.
penalty for offence under, 22.
form of information under, 94.
exception in favour of anglers, 22.
list of offences enacted by the 24th section, 23.
- LATH,**
prohibition of using, for taking salmon, trout, or char, 19.
penalty for using, 38.
form of information for, 80.
- LEASE OF FISHERY,**
must be by deed, 11.
right of fishery will not otherwise pass, 11.
- LEGALITY** of scale of licences, proof of, 77.
- LICENCE,**
board of conservators may issue, for salmon, 45.
for trout and char, 43.
provisions as to issue, 43.
rules as to, 45.
may be issued for trout and char by day, week, or season, 43.
scale of, 48, 49.
proof of legality of scale of, 77.
issue of, 45.
endorsement of, 49.
production of, 48.
price of, for trout or char, 43.
salmon, authorizes to fish for trout or char, 43.
penalty on fishing with a rod without, 47.
with a net, 47.
on taking fish without licensed instrument, 51.
time after which it is illegal to fish without, 46.
variation of licence duty, 52.
- LIGHT,**
prohibition of use of, for salmon, trout, or char, 19.
penalty for, 38.
form of information for, 80.
- LIQUID MATTER,**
placing, in salmon river to kill fish, 20.
penalty for, 80.
form of information for, 80.
- LORD OF MANOR,**
right of, to fishery, 15.
on enclosure, 15.
no presumption that fishery belongs to, 15.
- LUNE,** weekly close time on, 98.

GENERAL LICENCE, provision as to, 46.

GRANT OF FISHERY must be by deed, 11.

GRANTING LICENCES, rules as to, 45.

GRAYLING, application of Freshwater Fisheries Act when specially preserved, 58.

HARD LABOUR, power to award, on third conviction in certain cases under Salmon Fishery Acts, 74.

HEARING of information, 66.

ILLEGAL FISHING at night, persons found may be arrested, 55.

IMPLEMENTS OF FISHING, seizure of, 24.

IMPRISONMENT, power to award on third conviction, under Salmon Acts, for certain offences, 74.

INJUNCTION to restrain fishing in private waters, 26.

ISSUE OF LICENCES, rules as to, 45.

JACK,
prohibition of use of, 19.
penalty for, 38.
form of information, 80.

JOINT tenants of fishery, 15.

JUNE 15th, close season for protection of freshwater fish terminates on, 58.

JUSTICES,
disqualification of, 76.
may grant search warrant for suspected place, 56.
jurisdiction of, when ousted by claim of right, 23.

KENT,
close time in, 98.
use of gaff in, 99.

KINDS of private fishery, 9.

KILLING FISH,
by prohibited modes, 18.
by placing noxious materials in salmon rivers, 20.
by using dynamite, 18.
by using explosive substances, 18.
by poisonous liquid matters, 20.
by poisonous solid matters, 20.
at prohibited times, 17.

LAMPERNS, close time for, 18.

LAND,

fishery will pass as appurtenant to, 11.
entry on, by water bailiff, 53.

LARCENY,

of fish, 21.
Larceny Consolidation Act, 24 & 25 Vict. c. 96, s. 24..21.
penalty for offence under, 22.
form of information under, 94.
exception in favour of anglers, 22.
list of offences enacted by the 24th section, 23.

LATH,

prohibition of using, for taking salmon, trout, or char, 19.
penalty for using, 38.
form of information for, 80.

LEASE OF FISHERY,

must be by deed, 11.
right of fishery will not otherwise pass, 11.

LEGALITY of scale of licences, proof of, 77.

LICENCE,

board of conservators may issue, for salmon, 45.
for trout and char, 43.
provisions as to issue, 43.
rules as to, 45.
may be issued for trout and char by day, week, or season, 43.
scale of, 48, 49.
proof of legality of scale of, 77.
issue of, 45.
endorsement of, 49.
production of, 48.
price of, for trout or char, 43.
salmon, authorizes to fish for trout or char, 43.
penalty on fishing with a rod without, 47.
with a net, 47.
on taking fish without licensed instrument, 51.
time after which it is illegal to fish without, 46.
variation of licence duty, 52.

LIGHT,

prohibition of use of, for salmon, trout, or char, 19.
penalty for, 38.
form of information for, 80.

LIQUID MATTER,

placing, in salmon river to kill fish, 20.
penalty for, 80.
form of information for, 80.

LORD OF MANOR,

right of, to fishery, 15.
on enclosure, 15.
no presumption that fishery belongs to, 15.

LUNE, weekly close time on, 98.

GENERAL LICENCE, provision as to, 46.

GRANT OF FISHERY must be by deed, 11.

GRANTING LICENCES, rules as to, 45.

GRAYLING, application of Freshwater Fisheries Act when specially preserved, 58.

HARD LABOUR, power to award, on third conviction in certain cases under Salmon Fishery Acts, 74.

HEARING of information, 66.

ILLEGAL FISHING at night, persons found may be arrested, 55.

IMPLEMENTS OF FISHING, seizure of, 24.

IMPRISONMENT, power to award on third conviction, under Salmon Acts, for certain offences, 74.

INJUNCTION to restrain fishing in private waters, 26.

ISSUE OF LICENCES, rules as to, 45.

JACK,
prohibition of use of, 19.
penalty for, 38.
form of information, 80.

JOINT tenants of fishery, 15.

JUNE 15th, close season for protection of freshwater fish terminates on, 58.

JUSTICES,
disqualification of, 76.
may grant search warrant for suspected place, 56.
jurisdiction of, when ousted by claim of right, 23.

KENT,
close time in, 98.
use of gaff in, 99.

KININ of private fishery, 9.

KILLING FISH,
by prohibited modes, 18.
by placing noxious materials in salmon rivers, 20.
by using dynamite, 18.
by using explosive substances, 18.
by poisonous liquid matters, 20.
by poisonous solid matters, 20.
at prohibited times, 17.

LAMPRENS, close time for, 18.

- LAND,**
fishery will pass as appurtenant to, 11.
entry on, by water bailiff, 53.
- LARCENY,**
of fish, 21.
Larceny Consolidation Act, 24 & 25 Vict. c. 96, s. 24..21.
penalty for offence under, 22.
form of information under, 94.
exception in favour of anglers, 22.
list of offences enacted by the 24th section, 23.
- LATH,**
prohibition of using, for taking salmon, trout, or char, 19.
penalty for using, 38.
form of information for, 80.
- LEASE OF FISHERY,**
must be by deed, 11.
right of fishery will not otherwise pass, 11.
- LEGALITY** of scale of licences, proof of, 77.
- LICENCE,**
board of conservators may issue, for salmon, 45.
for trout and char, 43.
provisions as to issue, 43.
rules as to, 45.
may be issued for trout and char by day, week, or season, 43.
scale of, 48, 49.
proof of legality of scale of, 77.
issue of, 45.
endorsement of, 49.
production of, 48.
price of, for trout or char, 43.
salmon, authorizes to fish for trout or char, 43.
penalty on fishing with a rod without, 47.
with a net, 47.
on taking fish without licensed instrument, 51.
time after which it is illegal to fish without, 46.
variation of licence duty, 52.
- LIGHT,**
prohibition of use of, for salmon, trout, or char, 19.
penalty for, 38.
form of information for, 80.
- LIQUID MATTER,**
placing, in salmon river to kill fish, 20.
penalty for, 80.
form of information for, 80.
- LORD OF MANOR,**
right of, to fishery, 15.
on enclosure, 15.
no presumption that fishery belongs to, 15.
- LUNE,** weekly close time on, 98.

GENERAL LICENCE, provision as to, 46.

GRANT OF FISHERY must be by deed, 11.

GRANTING LICENCES, rules as to, 45.

GRAYLING, application of Freshwater Fisheries Act when specially preserved, 58.

HARD LABOUR, power to award, on third conviction in certain cases under Salmon Fishery Acts, 74.

HEARING of information, 66.

ILLEGAL FISHING at night, persons found may be arrested, 55.

IMPLEMENTS OF FISHING, seizure of, 24.

IMPRISONMENT, power to award on third conviction, under Salmon Acts, for certain offences, 74.

INJUNCTION to restrain fishing in private waters, 26.

ISSUE OF LICENCES, rules as to, 45.

JACK,
prohibition of use of, 19.
penalty for, 38.
form of information, 80.

JOINT tenants of fishery, 15.

JUNE 15th, close season for protection of freshwater fish terminates on, 58.

JUSTICES,
disqualification of, 76.
may grant search warrant for suspected place, 56.
jurisdiction of, when ousted by claim of right, 23.

KENT,
close time in, 98.
use of gaff in, 99.

KINDS of private fishery, 9.

KILLING FISH,
by prohibited modes, 18.
by placing noxious materials in salmon rivers, 20.
by using dynamite, 18.
by using explosive substances, 18.
by poisonous liquid matters, 20.
by poisonous solid matters, 20.
at prohibited times, 17.

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- LAND,**
fishery will pass as appurtenant to, 11.
entry on, by water bailiff, 53.
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of fish, 21.
Larceny Consolidation Act, 24 & 25 Vict. c. 96, s. 24..21.
penalty for offence under, 22.
form of information under, 94.
exception in favour of anglers, 22.
list of offences enacted by the 24th section, 23.
- LATH,**
prohibition of using, for taking salmon, trout, or char, 19.
penalty for using, 38.
form of information for, 80.
- LEASE OF FISHERY,**
must be by deed, 11.
right of fishery will not otherwise pass, 11.
- LEGALITY** of scale of licences, proof of, 77.
- LICENCE,**
board of conservators may issue, for salmon, 45.
for trout and char, 43.
provisions as to issue, 43.
rules as to, 45.
may be issued for trout and char by day, week, or season, 43.
scale of, 48, 49.
proof of legality of scale of, 77.
issue of, 45.
endorsement of, 49.
production of, 48.
price of, for trout or char, 43.
salmon, authorizes to fish for trout or char, 43.
penalty on fishing with a rod without, 47.
with a net, 47.
on taking fish without licensed instrument, 51.
time after which it is illegal to fish without, 46.
variation of licence duty, 52.
- LIGHT,**
prohibition of use of, for salmon, trout, or char, 19.
penalty for, 38.
form of information for, 80.
- LIQUID MATTER,**
placing, in salmon river to kill fish, 20.
penalty for, 80.
form of information for, 80.
- LORD OF MANOR,**
right of, to fishery, 15.
on enclosure, 15.
no presumption that fishery belongs to, 15.
- LUNE,** weekly close time on, 98.

GENERAL LICENCE, provision as to, 46.

GRANT OF FISHERY must be by deed, 11.

GRANTING LICENCES, rules as to, 45.

GRAYLING, application of Freshwater Fisheries Act when specially preserved, 58.

HARD LABOUR, power to award, on third conviction in certain cases under Salmon Fishery Acts, 74.

HEARING of information, 66.

ILLEGAL FISHING at night, persons found may be arrested, 55.

IMPLEMENTS OF FISHING, seizure of, 24.

IMPRISONMENT, power to award on third conviction, under Salmon Acts, for certain offences, 74.

INJUNCTION to restrain fishing in private waters, 26.

ISSUE OF LICENCES, rules as to, 45.

JACK,
prohibition of use of, 19.
penalty for, 38.
form of information, 80.

JOINT tenants of fishery, 15.

JUNE 15th, close season for protection of freshwater fish terminates on, 58.

JUSTICES,
disqualification of, 76.
may grant search warrant for suspected place, 56.
jurisdiction of, when ousted by claim of right, 23.

KENT,
close time in, 98.
use of gaff in, 99.

KINDS of private fishery, 9.

KILLING FISH,
by prohibited modes, 18.
by placing noxious materials in salmon rivers, 20.
by using dynamite, 18.
by using explosive substances, 18.
by poisonous liquid matters, 20.
by poisonous solid matters, 20.
at prohibited times, 17.

LAMPERNS, close time for, 18.

- LAND,**
fishery will pass as appurtenant to, 11.
entry on, by water bailiff, 53.
- LARCENY,**
of fish, 21.
Larceny Consolidation Act, 24 & 25 Vict. c. 96, s. 24..21.
penalty for offence under, 22.
form of information under, 94.
exception in favour of anglers, 22.
list of offences enacted by the 24th section, 23.
- LATH,**
prohibition of using, for taking salmon, trout, or char, 19.
penalty for using, 38.
form of information for, 80.
- LEASE OF FISHERY,**
must be by deed, 11.
right of fishery will not otherwise pass, 11.
- LEGALITY** of scale of licences, proof of, 77.
- LICENCE,**
board of conservators may issue, for salmon, 45.
for trout and char, 43.
provisions as to issue, 43.
rules as to, 45.
may be issued for trout and char by day, week, or season, 43.
scale of, 48, 49.
proof of legality of scale of, 77.
issue of, 45.
endorsement of, 49.
production of, 48.
price of, for trout or char, 43.
salmon, authorizes to fish for trout or char, 43.
penalty on fishing with a rod without, 47.
with a net, 47.
on taking fish without licensed instrument, 51.
time after which it is illegal to fish without, 46.
variation of licence duty, 52.
- LIGHT,**
prohibition of use of, for salmon, trout, or char, 19.
penalty for, 38.
form of information for, 80.
- LIQUID MATTER,**
placing, in salmon river to kill fish, 20.
penalty for, 80.
form of information for, 80.
- LORD OF MANOR,**
right of, to fishery, 15.
on enclosure, 15.
no presumption that fishery belongs to, 15.
- LUNE,** weekly close time on, 98.

MANOR,

fishery will pass as appurtenant to, 11.
right of lord of a, 15. *See* LORD OF MANOR.

MARCH 15th, commencement of close season for freshwater fish, 58.

MARINE MUTINY ACT, provision of, as to fish, 29.

MATERIAL,

placing noxious, for killing fish in salmon river, 20.
penalty for, 80.
form of information for, 80.

MATTER,

liquid, placing in salmon river, to kill fish, 20.
solid, placing in salmon river, to kill fish, 20.
penalty for, 80.
form of information for, 80.

MEETING OF CONSERVATORS, proceedings at, evidence of, 77.

MERGER, several fishery does not merge in crown, 11.

MESH OF NET,

for salmon, 19.
penalty for fishing with improper, 81.
form of information for, 81.

MIGRATORY FISH, 58.

MILFORD HAVEN, local law as to rivers running into, 32.

MILL-DAM,

breaking down, 27.
penalty for, 28.
form of information for, 95.
use of, for fishing for salmon, illegal, 29.
penalty for, 81.
form of information for, 81.

MINIMUM PENALTIES, 72.

MINUTES OF CONVICTION,

to be sent to board of conservators, 73.
penalty for not sending, 73.
payment for, 73.

MISDEMEANOR, INDICTABLE, 79.

MODES of taking fish, prohibited, 18, 29.

MONTHS, FENCE, on Thames, 33.

MUTINY ACT, provision in, as to fish, 29

NAVIGABLE RIVER,

banks of, no right to fish from, 6.
right to fish in, 2.

NAVIGABLE RIVER—*continued.*

- right to soil in, 4.
- rights in, above tideway, 2.
- free fishery in, 12.
- ancient, 2.
- made so by statute, 4.

NETS,

- mesh of, for salmon, 19.
- penalty for using improper, 81.
- form of information for, 81.
- shooting draft, for salmon before other landed, 19.
- penalty for, 87.
- form of information for, 87.

NIGHT,

- definition of, 25.
- person illegally fishing at, may be apprehended, 55.

NON-USER, several fishery may be lost by, 10.

NORFOLK, local law as to fisheries in, 33.

NORWICH, local law as to fisheries there, 33.

NOXIOUS MATERIALS,

- placing, in salmon river to kill fish, 20.
- in private water to kill fish, 27.
- penalty for, 28.
- form of information for, 95.

OBSTRUCTING,

- fish descending the stream, 19.
- penalty for, 87.
- form of information for, 87.

OCCUPIER,

- rights as to fish, 11.
- lease must be by deed, 11.
- cannot angle or give leave, under Fisheries Preservation Act, 60.
- cannot seize angler's tackle, 25.

OFFENCES,

- in private fisheries, 21.
- committed on sea, 24, 79.
- on boundary of counties or parishes, 22, 79.

OFFICER poaching fish, provision of Mutiny Act as to, 29.

OPEN SEA, Freshwater Fisheries Act does not apply to fish migrating to, 58.

OPPOSITE OWNERS, rights of, 16.

OTTER,

- prohibition of use of, 19.
- penalty for, 80.
- form of information for, 80.

OWNER,

- of soil, several fishery must be derived from, 10.
- of several fishery *primâ facie* of soil, 9.
- of several fishery, rights of, 12.
- of free fishery, rights of, 13, 14.
- of common of fishery, rights of, 14.
- of opposite banks, rights of, 16.
- can seize tackle of anglers, 25.
- powers under Freshwater Fisheries Act, 58, 60.

OWNERSHIP OF SOIL,

- in tidal navigable river, 4, 5.
- in non-tidal navigable river, 4, 5.
- in river made navigable by statute, 4.
- in several fishery, 9, 10.
- does several fishery import? 10.
- in Severn, 5.
- in Thames, 5.

PARISHES, boundaries of, offence committed on, 22, 79.

PASSAGE,

- of fish down rivers, obstructing, 30.
- penalty for, 87.
- form of information for, 87.

PASTURE, fishery cannot pass as appurtenant to a right of, 11.

PAYMENT of penalties to conservators, 70.

PENALTIES,

- for mixing poisonous substances in rivers, 80.
- fishing with light and spear, 80.
- using roe as a bait, 80.
- using improper nets, 81.
- using fixed engines, 81.
- catching salmon near a mill dam, 81.
- taking or selling unclean or unseasonable salmon, trout, or char, 81.
- taking young of salmon, 82.
- disturbing spawning fish, 82.
- fishing in close time, 82.
- not removing fixed engines after commencement of close time, 82.
- fishing during weekly close time, 83.
- not leaving passage through cribs or traps during weekly close time, 83.
- obstructing erection of a fish pass, 83.
- injuring a fish pass, 83.
- preventing salmon passing through a fish pass, 84.

PENALTIES—continued.

- for not attaching a fish pass to new dams, 84, 89.
- not supplying water to fish pass, 84.
- not making a free gap, 84.
- altering the bed of the river, 85.
- placing obstructions to a free gap, 85.
- violating rules as to construction of free gap, 85.
- improperly constructing walls of fishing weirs, 85.
- fishing without licence with rod, 85.
- with nets, 86.
- not producing a licence when demanded, 86.
- fishing for trout or char during close time, 86.
- exporting unclean or unseasonable salmon, 86.
- not properly entering salmon intended for exportation for shipment at customs, 87.
- shooting draft net before other landed, 87.
- fixing eel baskets in salmon rivers at improper times, 87.
- taking fish descending the stream, 87.
- laying baskets on weirs, 87.
- interfering with salmon in close time, 88.
- fishing a hundred yards below or fifty yards above a weir, 88.
- buying or selling salmon in close time, 88.
- taking salmon otherwise than with a licensed instrument, 88.
- refusing to allow a water bailiff to examine a weir, 89.
- to search a boat, 89.
- to examine a net, 89.
- offence against bye-laws, 89.
- rebuilding a weir without a fish pass, 84, 89.
- rendering a fish pass inefficient, 90.
- refusing to allow inspector to inspect weir, 90.
- owner or occupier not maintaining gratings, 90.
- under Larceny Act, 94.
- under Malicious Injuries to Property Act, 95.
- under Dynamite Act, 96.
- under Freshwater Fisheries Act, 96.
- recovery of, 64, 69.
- time fixed for, 69.
- payment of, 70.
- imprisonment for default of payment, 74.
- proceedings to enforce recovery, 71.
- payment of, to conservators in certain cases, 70.
- minimum, 72.

PLACES,

- power to obtain warrant to search suspected, 56.
- form of information, 93.
- form of warrant, 93.

PLACING,

- noxious material in salmon rivers to kill fish, 20.
- liquid matter to kill fish, 20.
- solid matter to kill fish, 20.
- dynamite or explosive substance, 61, 62.

POISONING FISH, 27.

- POLLAN**,
no close time for, 18.
Freshwater Fisheries Act do not apply to, 58.
- PONDS**, right of fishing in, 11.
- POSSESSION**,
of salmon, trout, or char roe, 19.
penalty for, 38.
form of information, 80.
of trout or char during close time for sale, 41.
penalty for, 41.
form of information for, 88.
- POWER** of water bailiffs, 52.
- PRESUMPTION** as to lord of manor's rights, 15.
- PRIVATE FISHERIES**,
where they exist, 9.
offences in, 21.
- PROCEEDINGS** at meeting of Fishery Board, evidence of, 77.
- PRODUCTION OF LICENCES**, 48.
- PROFIT A PRENDRE**,
right of fishery is, 14.
no custom as to, 15.
- PROHIBITED**,
times of taking fish, 17.
modes of taking fish, 18, 29.
- PROPAGATION, ARTIFICIAL**, 41, 58.
- PROPERTY** in fish caught illegally, 27.
- PROVISIONS** as to licences, 43.
- PUBLIC FISHERIES**,
where they exist, 1.
when they exist, 7.
- PURPOSES, SCIENTIFIC**, 58.
- QUARTER SESSIONS**, appeal to, 75.
- QUESTION** of title, effect on justices' jurisdiction of, 23.
- RATING OF FISHERY**, 15.
by old law fishing not separately rated, 15.
now the contrary by 37 & 38 Vict. c. 54..15.
- RECOVERY OF PENALTIES**,
manner of, 64, 69.
time within which proceedings must be taken, 69.

RESTRICTION on times of taking fish, 17.

RIBBLE,

weekly close time on, 98.
use of gaff on, 99.

RIGHTS,

of owner of several fishery, 12.
may not use dynamite, 62.
may fish during close time under Freshwater Fisheries Act, 58.
may give leave to angle, 58.
of pasture, fishery will not pass as appurtenant to, 11.
to fishery from tenant's right, 11.
landowner's rights, 9.
only passes by deed, 11.
of fishing a profit à prendre, 14.
claim of, when it ousts justices' jurisdiction, 23.

RIVER,

ancient navigable, 2.
made navigable by statute, 4.
navigable, 2.
ownership of soil in, 3, 4.
private, 9.
obstructing passage of fish descending, 87.
penalty for, 87.
form of information for, 87.
right to the bank of, 6.
offences on, where punishable, 27, 79.

ROAD, fishing from, 5.

ROD AND LINE,

licence for, 51.
not transferable, 51.
penalty for fishing without, 47.
form of information for, 85.

ROE,

prohibition of use of fish as a bait, 38.
penalty for, 39.
form of information for, 80.
prohibition of possession of salmon, trout, or char, 19, 39.

ROTHER, weekly close time on, 98.

RULES as to granting licences, 45.

SALE,

of fish during close time, 88.
penalties for, 88.
form of information for, 88.

SALE—*continued*.

- of trout during close time, 41.
 - penalty for, 41.
 - form of information for, 88.
- of char during close time, 41.
 - penalty for, 41.
 - form of information for, 88.
- of fish under Freshwater Fisheries Act, 36, 58.
 - penalty for, 59.
 - form of information for, 96.

SALMON,

- roe, prohibition of use of, 19, 39.
 - of having in possession, 39.
 - penalty for, 39.
 - form of information for, 80.
- net for taking, mesh of, 19.
 - penalty for using improper, 81.
 - form of information for, 81.
- prohibition of use of fixed engine for taking, 19.
 - penalty for using, 81.
 - form of information for, 81.
- fishing for, near a weir forbidden, 19.
 - penalty for, 81.
 - form of information for, 81.
- fishing for, without a licence, 19.
 - penalty for, 51.
 - form of information for, 88.
- sale of, during close time, 88.
 - penalty for, 88.
 - form of information for, 88.

SALMON FISHERY ACTS, alterations in by Freshwater Fisheries Act, 34, 35.**SALMON RIVER,**

- meaning of term, 42.
- placing noxious materials in, to kill fish, 20.
 - penalty for, 80.
 - form of information for, 80.
- placing liquid or solid matter in, to kill fish, 20, 80.
 - penalty for, 80.
 - form of information for, 80.
- placing eel baskets in, during prohibited time, 87.
 - penalty for, 87.
 - form of information for, 87.
- obstructing fish descending stream, 87.
- formation of, into district, 42.

SCALE,

- of licences 48, 49.
- proof of legality of, 77.

SCIENTIFIC PURPOSES possession of fish for, 41, 58.

SEA SHORE,

- fish on, 31.
- offences committed on, 77.
- jurisdiction as to offences on, 24.

SEARCH WARRANT, 35, 56.

- for what it may be granted, 56.
- form of information for, 93.
- issue of, 56.
- form of, 93.

SEIONT, time for use of gaff on, 99.**SEIZURE,**

- of tackle of fishers, 24.
- must be by owner, 25.
- on his own ground, 25.
- only of implements actually used in fishing, 25.
- if of angler's tackle he is exempted from further punishment, 24.

SEVERAL FISHERY, 9.

- what it is, 9.
- does it import ownership of soil? 10.
- must be derived from owner of soil, 11.
- does not merge in crown, 11.
- can be lost by non-user, 10, 11.
- rights of owner of, under Freshwater Fisheries Act, 12, 53.
- rights of owner of, 12.
- owner of soil *primâ facie* owner of, 9.
- grant of a fishery *primâ facie* grant of a, 11.

SEVERN,

- ownership of soil in, 5.
- local law as to, 31, 62.

SEVERN FISHERY DISTRICT, close times for elvers in, 33.**SHOOTING,**

- draft net for salmon before previous one landed, 19.
- penalty for, 87.
- form of information for, 87.

SIZE OF FISH,

- no restriction in Freshwater Fisheries Act as to, 20.

SNATCH,

- prohibition on using, for salmon, trout, or char, 19.
- penalty for, 80.
- form of information for, 80.

SOIL,

- in non-navigable tidal river, ownership of, 4.
- in Severn, 5.
- in Thames, 5.
- owner of several fisheries is to be deemed *primâ facie* owner of, 10.

SOLWAY FRITH, local law as to fisheries in, 32.

SOUTHAMPTON, local law as to fisheries in county of, 32.

SPAWNING,
disturbing salmon, 30.
penalty for, 82.
form of information for, 82.

SPEAR,
prohibition of use of, 19, 38.
penalty for, 38.
form of information for, 80.

STEALING FISH from a tank, 21.

STREAM,
obstructing fish descending, 30.
penalty for, 87.
form of information for, 87.

STROKEHALL,
prohibition of use of, 19, 38.
penalty for, 38.
form of information for, 80.

SUFFOLK, local law as to fisheries in, 33.

SUMMARY CONVICTION,
proceedings on, 64.
recovery of penalties on, 69.

SUSPECTED PLACES, search warrant may be granted for, 56.

TACKLE of anglers may be seized, 24.

TAFF AND ELY,
time for use of gaff on, 99.
close time for trout on, 99.

TAKING FISH,
restriction on times of, 17.
on modes of, 18.

TAW AND TORRIDGE,
annual close time on, 98.
weekly close time on, 98.
time for use of gaff on, 99.

TELFY AND AEYRON, time for use of gaff on, 99.

TEIGN,
annual close time on, 98.
weekly close time on, 98.
close time for trout on, 99.

TENANT,
farm, right to fishery, 11.
in common of a fishery, 15.

THAMES,

- local law as to, 32.
- fence months on, 33.
- ownership of soil in, 5.

TIDEWAY,

- rights of fishing in river below, 2.
- in river above, 2.
- ownership of soil in river below, 5.
- in river above, 5.

TIME, length of, gives no right to fish, 6.

TIMES,

- of taking fish, restriction on, 17.
- for proceedings for penalties, 64, 69.
- after which it is illegal to fish for salmon, trout, or char without a licence, 78.

TOWING PATH, right of fishing from, 5.

TROUT,

- roe, prohibition on fishing for, with, 38, 39.
 - penalty for, 39.
 - form of information for, 80.
 - of having roe in possession, 39.
- of taking, with light, spear, gaff, &c., 38.
 - penalty for, 38.
 - form of information for, 80.
- prohibition on taking unclean or unseasonable, 40.
 - penalty for, 40, 41.
 - form of information for, 81.
- close time for, 41.
 - fishing for, during, 41.
 - penalty for, 41.
 - form of information for, 86.
 - no forfeiture of instruments on conviction, 42.
 - power to vary, 57.
 - list of districts that have varied, 99.
 - no power of sale during extended open time, 57.
- sale of, during close time, 41.
 - penalty for, 41.
 - form of information for, 88.
- fishery districts may be formed for, 42.
- licences may be granted for, 43.
- penalty on fishing for, without a licence, 47, 51.
 - form of information for, 88.
- power of water bailiffs as to, 53—55.
- excepted out of Freshwater Fisheries Act, 58.
- rights of owner of several fishery, where specially preserved, 58.

TRUNK, stealing fish from, 21.

TWEED, local law as to, 32.

UNCLEAN SALMON, TROUT, OR CHAR,

prohibition on taking, 40.

what are, 41.

penalty for, 40, 41.

form of information for, 81.

“UNLAWFULLY,” meaning of the term, 23.

UNSEASONABLE SALMON, TROUT, OR CHAR, 40.

prohibition on taking, 40, 41.

what are, 41.

penalty for taking, 40, 41.

form of information for, 81.

USE OF GAFF, times for, 99.

USER, fishery may be lost by non-, 10.

USK,

annual close time on, 98.

weekly close time on, 98.

use of gaff on, 99.

VARIATION of licence duty, rules as to, 52.

VERNIEW, local law as to fisheries in, 31, 62.

WARRANT,

water bailiff's, production of, 54.

search, 35, 56.

WATER ADJOINING DWELLING-HOUSES,

prohibition on fishing in, 21, 22.

penalty for, 22.

form of information for, 94.

penalty for angling in, 22.

WATER NOT ADJOINING DWELLING-HOUSE,

prohibition of fishing in, 22.

penalty for, 22.

WATER BAILIFFS,

powers of, 52.

under Salmon Fishery Act, 1865..53.

under Salmon Fishery Act, 1873..53.

extension of, to trout and char by Freshwater Fisheries Act, 52.

power of entry on lands, 53, 55.

to view banks of salmon, trout, or char rivers, 55.

to inspect weirs and fixed engines, 53.

to stop and examine boats, 54.

to examine nets, 54.

to seize illegal instruments and fish illegally caught, 54.

have rights and liabilities of constables, 54.

how far power extends outside their district, 52, 53.

WEEK, licence for trout and char may be issued for, 43.

WEEKLY CLOSE SEASON, 18.

penalty for fishing in, 83.

form of information for, 83.

does not extend to angling, 18.

variation of, 98.

list of rivers that have varied, 98.

free passage through cribs, &c., during, 83.

penalty for not maintaining, 83.

form of information for, 83.

WEIR,

prohibition of use of, for fishing, 29.

penalty for using, 81.

form of information for, 81.

fishing within fifty yards above or one hundred yards below, forbidden, 19, 81, 88.

penalty for, 81, 88.

form of information for, 81, 88.

fishing, rules as to, 84, 85.

form of information for offence as to, 84, 85.

WILTS, local law as to fisheries in, 32.

WIRE,

prohibition of use of, for taking salmon, trout, or char, 19, 38.

penalty for, 38.

form of information for, 80.

WRIT, indorsement on, 27.

WYE, time for use of gaff on, 99.

YOUNG OF SALMON,

prohibition on taking, 80.

penalty for, 83.

form of information for, 83.

YORKSHIRE RIVERS,

annual close time on, 98.

time for use of gaff, 98.

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INDEX TO CATALOGUE.

	Page		Page		Page
Accounts,		Blockade.	Deane ... 61	Consolidation Acts.	
<i>Law of.</i> Pulling ...	59	Bookkeeping,		Shelford ...	18
Actions at Law.		<i>Solicitors'.</i> Coombs ...	45	Conspiracy,	
Browne ...	61	Boundaries.	Hunt... 46	<i>Law of.</i> Wright ...	58
Kerr ...	62	Brokers.	Keyser ... 60	Constitution.	
Williams ...	61	Burgesses Manual.		May ...	26, 64
Administration Bonds.		Gaches ...	62	Stephen ...	5, 64
Chadwick ...	10	Carriers,		Constitutional History.	
Admiralty,		<i>Inland.</i> Powell ...	36	Fulton ...	27
<i>Practice.</i> Coote ...	81	<i>Railway.</i> Shelford ...	18	Contraband of War.	
Advowsons.		Chamber Practice.		Moseley ...	43
Mirehouse ...	60	<i>Com.Law.</i> Parkinson ...	62	Deane ...	61
Agricultural Holdings.		Chancery Practice.		Contracts.	
Bund ...	16	Goldsmith ...	29	<i>Specific Performance.</i>	
Aliens.	Cutler ... 31	Hunter ...	62	Fry ...	57
Appeals, House of Lords		<i>Chancery Claims.</i>		Contributories.	Collier 48
Denison & Scott ...	17, 64	Drewry ...	10	Conveyancing,	
Arbitrations.	Redman 33	<i>Drafting.</i> Lewis ...	21	<i>Introduction.</i> Lewis ...	21
Articled Clerk.		Charitable Trusts.		<i>Practice.</i> Ball ...	56
Mosely ...	29	Tudor ...	40	Barry ...	38
Attachment,		Church Building.		Smith ...	37
<i>Foreign,</i> Brandon ...	43	Trower ...	47	Tudor ...	23, 64
Average.	Crump ... 8	<i>Pews.</i> Heales ...	44	<i>Forms.</i> Barry ...	38
Awards.	Redman ... 33	Church and State.		Crabb ...	30
Banking.	Grant ... 19	Hale ...	63	Christie ...	30
Keyser ...	60	Civil Law.		Kelly ...	33
Bankruptcy.	Robson 7	Tomkins & Jencken ...	37	Shelford ...	30
<i>Manual.</i>		Claims and Defences,		Rouse ...	34
Bulley & Bund ...	48	<i>Forms of.</i> Drewry... 10		Convictions,	
<i>In County Courts.</i>		Collieries.		<i>Synopsis of.</i> Oke ...	49
Davis ...	13	Bainbridge ...	25	<i>Forms.</i> Oke ...	50
<i>Index.</i> Linklater ...	61	Colonial Law.		Co-operation.	
Bar.		Barbados ...	60	Brabrook ...	44
Examination Journal ...	56	Commentaries.		Copyholds,	
<i>Kalendar.</i> Shaw ...	57	Stephen's Blackstone's		<i>Enfranchisement.</i>	
Smith ...	43	... 5, 64		Rouse ...	44
Pearce ...	60	Phillimore's ...	24	<i>Law of.</i> Scriven ...	40
Barbados.	Laws of ... 60	Common Form Practice.		Coroner.	Baker ... 60
Belligerents.		Coote ...	17	Corporations in General.	
Hamel ...	60	Common Law,		Grant ...	46
Bengal Code,		<i>Law & Equity.</i> Chute ...	14	Costs, <i>Law of.</i> Gray ...	59
<i>Regulations of the.</i>		<i>Practice.</i> Dixon ...	59	County Courts,	
Field ...	43	Lush ...	59	<i>Practice.</i> Davis ...	12
Bills of Exchange.		Kerr ...	62	<i>Practice in Equity, Bank-</i>	
Grant ...	19	Companies.	Grant ... 46	<i>ruptcy, &c.</i> Davis ...	13
Bills of Sale.	Hunt 15	Shelford ...	9	<i>Practice in Admiralty.</i>	
Blackstone.		Compensation,		Coote ...	31
Stephen's ...	5, 64	<i>Law of.</i> Ingram ...	40		
		Shelford ...	18		

	Page		Page		Page
Criminal Law. Davis 41		Examinations.		International Law.	
Oke... 49		Bar Examination		Deane ... 61	
Curates. Field ... 60		Journal ... 56		Hamel ... 60	
Customs Laws.		Law Examination		Phillimore ... 24	
Hamel ... 9		Journal ... 54		Intoxicating Liquors	
Deeds. Tudor 23, 64		Mosely's Articled		Act. Oke ... 51	
Descents. Fearné ... 62		Clerks' Handy Book 29		Joint Stock Companies.	
Dictionary, Law.		Fences. Hunt ... 46		Collier ... 48	
Mozley & Whiteley 11		Final Examination		Shelford ... 9	
Directory of Magis-		Guide. Bedford ... 22		Accounts. Pulling 59	
trates ... 56		Fisheries. Bund ... 47		Judicature.	
Divorce. Practice.		Oke 53, 64		Bedford ... 22	
Browning ... 57		Foreshores. Hunt ... 46		Drewry ... 10	
Domestic Servants.		Williams v. Nicholson 60		Trower ... 14	
Baylis ... 41		Forms,		Webb ... 37	
Draftsman (The).		Conveyancing. Barry 88		Jurisprudence,	
Kelly ... 33		Crabb 80		On Form of the Law.	
Drainage. Wilson ... 62		Rouse 34		Holland ... 53	
Woolrych 28		Magisterial. Oke ... 50		Webb ... 37	
Ecclesiastical.		Pleading. Chitty ... 58		Justice of Peace. Oke 49	
Practice. Coote ... 63		Greening 61		Labour Laws. Davis 7	
Judgment. Bayford 63		Probate. Chadwick 10		Land Settlements.	
Burder v. Heath... 63		Frauds. Hunt ... 15		Bund ... 62	
Gorham Case ... 63		Game Laws. Oke ... 52		Landlord and Tenant.	
Long v. Cape Town 63		Gas Companies Acts.		Fawcett ... 16	
Martin v. Macko-		Michael & Will ... 36		Lands Clauses Acts.	
nochie ... 63		Guarantees. De Colyar 13		Ingram ... 40	
Phillimore ... 63		Highways. Glen ... 64		Shelford ... 9	
Hebbert v. Purchas 63		House of Lords,		Law Dictionary ... 11	
Election, Law. Davis 37		Appeals.		Law Student's Mag. 54	
England, Laws of.		Denison & Scott 17, 64		Law Studies. Mosely 29	
Blackstone ... 5, 64		Digest. Clark ... 27		Smith 43	
Francillon ... 61		Practice. May 26, 64		Leading Cases,	
Stephen ... 5, 64		Income Tax Laws.		Real Property. Tudor 23, 64	
English Bar. Pearce 60		Dowell ... 39		Leases. Crabb ... 30	
Smith 43		Indian Penal Code.		Rouse ... 34	
Equity,		Analysis. Cutler & Griffin 29		Legacy Duties.	
Claims. Drewry ... 10		Indian Statutes, Index.		Shelford ... 41	
County Courts. Davis 13		Field ... 43		Libel. Starkie ... 15	
Doctrine and Practice.		Industrial Societies.		Licensing Laws. Oke 51	
Goldsmith ... 29		Brabrook ... 44		Life Assurance.	
Draftsman. Lewis 21		Inns of Court Kalendar.		Blayney ... 60	
Equity & Law. Chute 14		Shaw ... 57		Lights (Window).	
Judicature. Trower 14		Institutes of English		Latham ... 33	
Pleader. Drewry ... 42		Public Law. Nasmith 26		Local Government.	
Principles. Roberts 13		Private Law.		Glen ... 64	
Suit in. Hunter ... 62		Nasmith ... 26		Locus Standi.	
Evidence,		Intermediate Examina-		Clifford & Rickards 32	
County Court. Davis 12		tion. Bedford ... 22		Lunacy. Phillips ... 57	
Law of. Powell ... 6				Magisterial Law. Oke 49	
Wills. Wigram ... 45				Forms. Oke ... 50	
Circumstantial. Wills 43				Magistrates' Direc-	
				tory ... 56	

	Page		Page		Page
Marine Insurance.		Precedents,		Servants.	Baylis ... 41
Crump	8	Conveyancing.	Barry 38	Sewers.	Woolrych ... 28
Maritime Warfare.		Crabb	30	Sheriff's Court.	Davis 12
Deane	61	Rouse	34	Short Hand.	Gurney 61
Hamel	60	Pleading.	Chitty, jun. 58	Slander.	Starkie ... 15
Masters and Servants.		Preliminary Exami-		Specific Performance.	
Baylis	41	nation Journal ...	56	Fry	57
Davis... ..	7	Principal and Surety.		Stamp Laws.	Dowell 19
Masters and Workmen.		De Colyar	13	Statutes, Table of Lead-	
Lovesy	58	Private Bills.		ing.	Bedford ... 22
Mayor's Court Practice.		Clifford & Stephens	32	Stock Exchange.	
Brandon	43	May	26, 64	Keyser	60
Memoirs of—		Private Law.	Nasmith 26	Succession Duty.	
Lyndhurst	60	Prize Law.	Lushington 44	Shelford	41
Talfourd	60	Probate,		Suit in Equity.	Hunter 62
Mines and Minerals.		Practice.	Coote ... 17	Summary Convictions.	
Bainbridge	25	Forms.	Chadwick... 10	Oke	49
Mortgages.		Duties.	Shelford ... 41	Tariffs and Treaties.	
Fisher... ..	20	Provident Societies.		Hamel	9
Rouse... ..	34	Brabrook	44	Hertalet	38
Municipal Law.		Public Law.	Nasmith 26	Tenancies, Agricul-	
Gaches	62	Railways.	Shelford 18	tural.	Bund ... 16
Grant	46	Compensation.		Torts.	Underhill ... 23
Naturalization.	Cutler 31	Ingram	40	Trade Marks.	Adams 25
Negligence.	Saunders 35	Real Property.		Treaties.	Hertalet ... 38
Parliamentary.		Tudor... ..	28, 64	Trusts.	Underhill ... 23
Clifford & Stephens	32	Chart.	Fearne ... 62	Charitable.	Tudor ... 40
May	26, 64	Seaborne	42	Turnpike Laws.	Oke 53
Partition, Law of.		Referees' Court.		Vendors & Purchasers.	
Lawrence	46	Clifford & Stephens	32	Seaborne	42
Partnership.	Dixon 35	Registration.	Davis 37	Water Companies Acts.	
Tudor's Pothier ...	61	Religious, <i>Doctrine.</i>		Michael & Will ...	36
Patent Cases.	Higgins 39	Burder v. Heath...	63	Wills.	
Patents.	Norman ... 61	<i>Discipline.</i>		Coote	17
Petty Sessions.	Oke 49	Long v. Cape Town	63	Crabb... ..	30
Pews.	Heales ... 44	Reporting Cases.		Tudor... ..	28, 64
Pleading,		Cutler	57	Wigram	45
<i>Common Law.</i>	Chitty 58	Ritual.		Winding-up.	
Greening	61	Bayford	63	Collier 48	
Williams	61	Hamel	63	Shelford	18
<i>Equity.</i>	Drewry ... 42	Roman Law.	Gaius 42	Window Lights.	
Lewis	21	Ortolan's	32	Latham	33
Poor Law,		Tomkins	42	Wongs.	Underhill... 23
Orders.	Glen ... 64	Tomkins & Jencken	23		
		Salmon Fisheries.			
		Bund... ..	47		
		Oke	64		
		Savings Banks.			
		Forbes	41		

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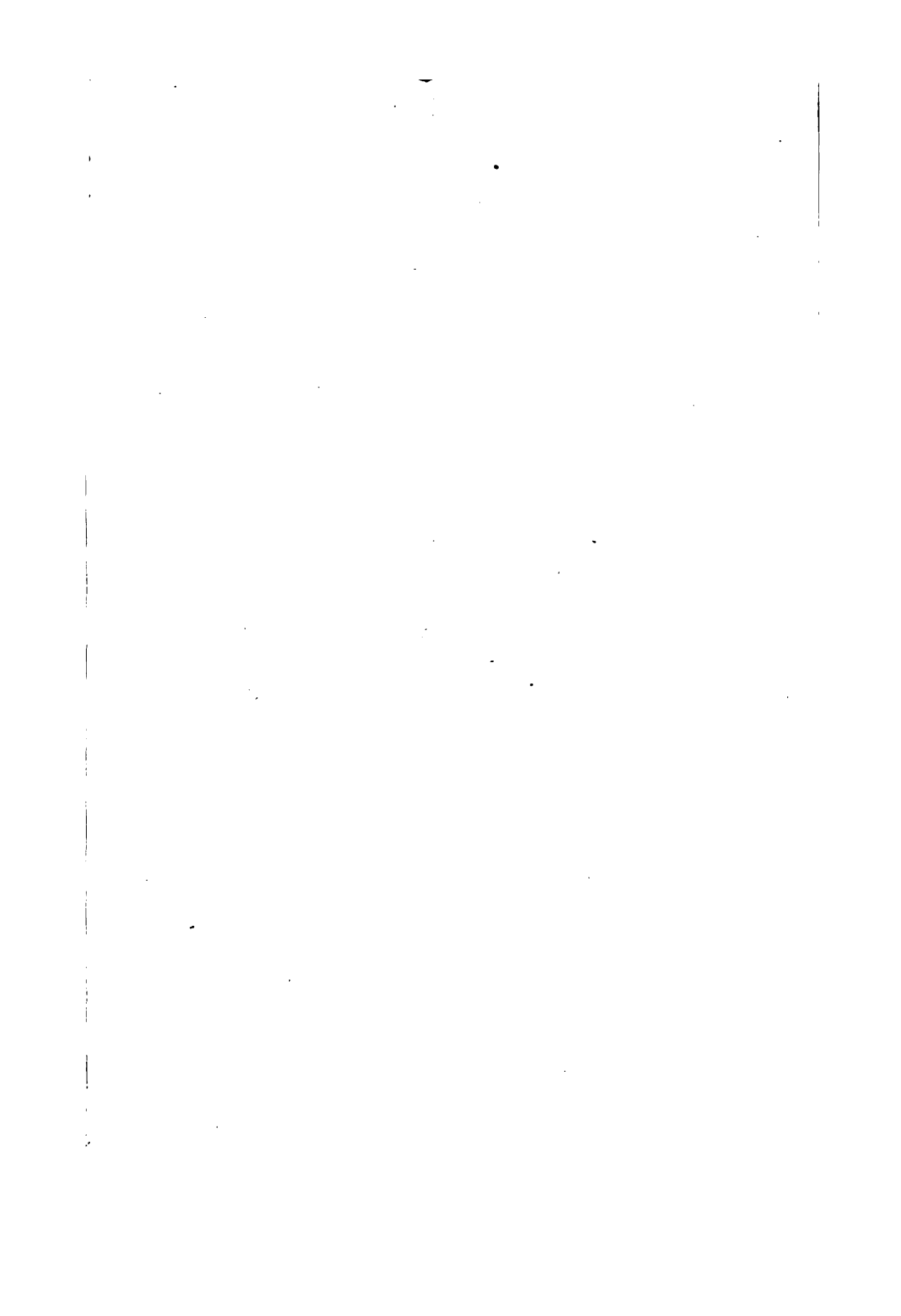
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